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ABSTRACT

The Senate oversight hearings on P.L. 94-142, the Education for All Handicapped Children Act, features statements by personnel representing the California State Department of Education, the Chief State School Officers, the National Association of State Directors of Special Education, and the Council for Exceptional Children. Questions from the committe senators to the representatives ae presented along with the responses. Among issues addressed are the need for clarification on plan approval, related services and complaint procedures; inadequate funding; interagency coordination; private schools; personnel development; child count; extended school year; the individualized education program; American Indian and Alaska native handicapped children; gifted and talented education; the importance of early childhood education; and the role of special education in the adult education system. (CL)

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OVERSIGHT ON EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1980

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HEARING

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED

OF THE

COMMITTEE ON LABOR AND HUMAN RESOURCES

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

OVERSIGHT ON PUBLIC LAW 94-142, EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

MARCH 3, 1980

EC 132457

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CONTENTS

Page

STATEMENTS

Riles, Wilson, superintendent of public instruction and director of education, State of California, accompanied by Charles Cooke, Federal program coordinator; Gail Imobersteg, office of the general counsel; and Ann Leavenworth, board member, California Board of Education 2
Prepared statement 8
Schmidt, Dr. Thomas C., commissioner of education, State of Rhode Island, chairperson of the Committee on Legislation, chief State school officers; Dr. Leonard Hall, assistant commissioner, Missouri Department of Elementary and Secondary Education, president and chairman of legislative committee, National Association of State Directors of Special Education 48
Prepared statement 51
Wyatt, Kenneth, president, Council for Exceptional Children, Decatur, Ga.; and Frederick Weintraub, assistant executive director, governmental relations, Council for Exceptional Children, Reston, Va., accompanied by Bruce Rameriz, director, American Indian Special Education Project 98
Joint prepared statement 106

ADDITIONAL INFORMATION

Questions and answers:
Questions asked by Senator Cranston with responses from Wilson Riles, superintendent of public instruction and director of education, State of California 23
Questions asked by Senator Randolph with responses from:
Hall, Leonard W., assistant commissioner, Department of Elementary and Secondary Education, State of Missouri 96
Riles, Wilson, superintendent of public instruction and director of education, State of California 38
Schmidt, Dr. Thomas C., commissioner of education, State of Rhode Island 65
Weintraub, Frederick J., assistant executive director for governmental relations, Council for Exceptional Children 152
Questions asked by Senator Stafford with responses from Wilson Riles, superintendent of public instruction and director of education, State of California 41

4

JUL 3 1980

OVERSIGHT ON EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1980

MONDAY, MARCH 3, 1980

U.S. SENATE,
SUBCOMMITTEE ON THE HANDICAPPED,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:45 a.m., in room 4200, Dirksen Senate Office Building, Senator Jennings Randolph (chairman of the subcommittee) presiding.

Present: Senators Randolph, Stafford, and Cranston (ex officio).

OPENING STATEMENT OF SENATOR RANDOLPH

Senator RANDOLPH. A pleasant morning to those who will testify and to our guests, guests who are intensely interested in the subject matter of today's hearing of the Subcommittee on the Handicapped.

We are especially gratified to have with us this morning the senior Senator from California and the assistant majority leader of the Senate, Alan Cranston, at this table. Senator Cranston is a former member of our subcommittee and has a continuing interest and concern about the programs benefiting handicapped individuals.

Knowing of his concern and understanding and his desire to work with the witnesses that are here this morning from the State of California, we have made arrangements for him to sit with us and participate actively in this hearing.

This is the 10th in a series of hearings by the Subcommittee on the Handicapped, begun during the last session and continuing in this session of the Congress, on the overview of Public Law 94-142, the Education for All Handicapped Children Act, and other matters. During these hearings to date we have heard over 100 witnesses and have received testimony from many more on many vital issues, the majority of them relating to the implementation of Public Law 94-142.

Parents, teachers, administrators, and other individuals have provided to the subcommittee the benefit of their experiences and have told us of their reactions to, and difficulties encountered with, various provisions of this law. Despite the problems with implementation of Public Law 94-142, which are inherent in any new legislation, all of these witnesses, without a single exception, reiterated their abiding commitment to the goal of making secure for all handicapped children their right to a free appropriate public education. They also reiterated their willingness to continue to work

with the subcommittee to improve the delivery of educational services to the Nation's handicapped.

Our witnesses this morning are State administrators and representatives of national organizations serving the handicapped.

Our first witness is a Californian who will be introduced by my colleague. What percentage of the population of this country does California have now, Alan?

Senator CRANSTON. Substantially more than 10 percent.

Senator RANDOLPH. Senator Cranston?

Senator CRANSTON. Thank you very much, Jennings. I appreciated your warm remarks at the outset of this hearing, and I appreciate the opportunity to introduce a fellow Californian—in fact, several fellow Californians—that are at the table.

Wilson Riles has achieved many, many things in the field of education. He has been very strongly supported by the people of California from the outset in his work in education. He is now serving in his third term as superintendent of public instruction in California, an office that he entered in 1971, and he has contributed a very great deal to the education and well-being of schoolchildren through his leadership in California and leadership that really impacts on the Nation in terms of education.

He also serves on the National Council of Education Research and the National Advisory Council on Child Nutrition.

It is a great pleasure, Wilson, to welcome you to this hearing; another matter we share in common is our interest in handicapped children, that you are going to talk about today.

I do also want to welcome Ann Leavenworth, who is a board member of the California Board of Education and Gail ImObersteg, of the office of the general counsel, and Charles Cooke, Federal program coordinator. We are delighted to have such fine Californians present today.

STATEMENT OF WILSON RILES, SUPERINTENDENT OF PUBLIC INSTRUCTION AND DIRECTOR OF EDUCATION, STATE OF CALIFORNIA, ACCOMPANIED BY CHARLES COOKE, FEDERAL PROGRAM COORDINATOR; GAIL IMOBERSTEG, OFFICE OF THE GENERAL COUNSEL; AND ANN LEAVENWORTH, BOARD MEMBER, CALIFORNIA BOARD OF EDUCATION

Mr. RILES. Thank you very much, Senator Cranston, and Mr. Chairman, for the opportunity to appear before you today and testify with regard to the administration and implementation of Public Law 94-142 and associated regulations; this opportunity is greatly appreciated by me.

As you may be aware, the State of California has been and is one of the primary supporters of the concepts underlying Public Law 94-142.

You may recall, Mr. Chairman, that we testified strongly in support of the passage of the law and after its enactment, we have been in the forefront of those States which have defended the act and worked to implement its provisions.

Even prior to the enactment of Public Law 94-142, we had begun to implement the California master plan for special education which we believe represents one of the best vehicles for the implementation of the spirit and intent of the Federal law.

The master plan for special education prohibits the labelling of children and provides for an individualized education plan for each handicapped child so that the education services would be specifically tailored to meet his or her needs.

The master plan requires increased State expenditures for special education. Last year, California appropriated more than $900 million State and local dollars to provide necessary and needed services to assist handicapped children.

I am proud of our active support for the identification of handicapped children. In California, our search and serve activities have been aggressive and constant. We have now identified over 340,000 handicapped children in the State, the highest number of handicapped children identified by any State in the Nation.

Our level of commitment, both with regard to State law, State administration, and State funds, and with regard to support of the spirit and intent of Public Law 94-142, is beyond question.

I come before you today, Mr. Chairman, in the spirit of continuing our strong commitment to the law by offering our suggestions for improving the operation and administration of the law.

We and other States have had our problems with regard to the program, which I will outline for you.

However, I wish to make it clear from the outset that our problems have not been with the law. We are not here to testify that the law should be redone. We are here to testify about the problems we have had and to suggest ways the Congress, through clarification of its intent, can help the Bureau of Education of Handicapped and the State to improve the administration and implementation of the law.

California, as well as other States, has identified five major issues with regard to administration and implementation which I would like to discuss with you.

First, there is a need for uniform and clearly-established policies regarding the plan approval process.

Second, there is a need for uniform criteria and standards in areas such as related services and complaint procedures.

Third, we need greater clarification of what is intended by the mandate that State education agencies are responsible for the provision and supervision of all educational services for handicapped children provided by other agencies.

Fourth, we need greater consistency in the standards and procedures of the Federal offices responsible for monitoring and enforcing Public Law 94-142 and section 504, specifically the Bureau of Education for the Handicapped and the Office of Civil Rights.

Fifth, we need increased funding of Public Law 94-142 in order to assist States sufficiently in meeting the standards mandated by that law.

This year, once again, California found itself in the unhappy position of having its State plan approved very late and then only after a time-consuming, agonizing process of negotiation, renegotiation, negotiation and renegotiation over an 11-month period.

I regret that in this testimony I have to spend as much time as I do in discussing process issues. I would rather talk about what happens to the children. But I believe the process issues do have significant impact upon what happens for children.

With regard to the plan approval process, I fully believe that had not the new commissioner of education, Dr. William Smith, and I intervened in the process last month, our plan would still not be approved.

The primary reason for our difficulties, Mr. Chairman, seems to have arisen because of three main factors.

First, historically, BEH has used the plan approval process as their primary compliance and enforcement mechanism.

Second, in this particular year, our plan approval process became entangled with an ongoing dispute between parents at one school and the local officials responsible for the delivery of services to their children.

And third, the above two factors seem to have combined to create an atmosphere of distrust between BEH and ourselves and between BEH and local school officials in California. This atmosphere made good faith negotiations nearly impossible.

It is my understanding that the State plan we are to submit next month is to be a 3-year plan. I assume that it will not be a compliance device and that the Bureau will have to develop a new compliance and enforcement mechanism.

I urge that the new 3-year plan approval process have time lines that will apply not only to States but also time lines as to when the Federal officials must either approve or disapprove the plan.

Further, I would expect the 3-year plan approval process to include clear uniform standards and criteria for the plan. We should be able to have our plan reviewed against known and published standards and criteria consistently applied and in a time certain.

However, I remain concerned as to what the new compliance and enforcement mechanism and processes will be. As far as I know, BEH has not asked State or local education agencies to participate in discussions of what the new compliance and enforcement structure should be or how it should work.

I would hope this committee would request that BEH consult with State and local officials as well as parents and advocacy groups and other interested parties.

Mr. Chairmam, having outlined my concerns with regard to systemic problems of the current and, perhaps, future BEH plan approval processes, I would like now to discuss the issues with regard to related services and complaint procedures.

Neither Public Law 94-142 nor the regulations are clear with regard to the definition of related services; therefore, disputes such as that between ourselves and BEH arose, as did disputes among local districts and parents and other service delivery agencies.

These disputes arose because there are differing answers to the following questions and differing interpretations of what Congress intended.

For example, what is the definition of related services, and when is a related service required in order for a child to benefit from special education?

For instance, is occupational therapy and physical therapy always a related service to be provided by an educational agency—a position taken by BEH—or are there exceptions to that rule? If so, what are the exceptions? What about psychotherapy?

What level of responsibility must the educational system assume for related services provided by other independent State, local, and/or Federal agencies?

The State departments of education are already responsible for insuring that necessary related services are provided, but what exactly does that mean?

Does it mean that the Congress intended that educational authorities have the right and the requirement to change or modify a medically prescribed course of treatment, such as psychiatric care?

In a broader context, how will the State education agency be held accountable to insure the compliance of other State and local agencies with all applicable Federal and State statutes?

Must the educational system always pay for related services designated in a student's individualized education plan?

If other social service providers are not required to provide related services to all the population in need, it seems to me that there is an incentive built in, in these situations, for other agencies to assume education must pick up the costs, and shift their funds away from handicapped children.

The second issue on which we experienced problems in regard to our plan was the mechanism, processes, and time lines for complaint resolution.

Although both the law and the regulations are quite general in the requirement for an effective complaint resolution process, BEH has been quite specific, and, at different times in our negotiations, BEH imposed new requirements in each of the following areas:

One, States must directly review, investigate, and act upon all complaints; referral of complaints to school districts for local resolution was not acceptable. Later, BEH modified this position.

Two, a complaint resolution process which took more than 60 calendar days could not be adjudged effective.

Three, State assurances that State regulations would be changed were not satisfactory for plan approval. The actual regulation had to be in place before approval could even be recommended.

What disturbs me with regard to these issues is threefold. BEH would prefer not to encourage complaints to be resolved locally, but would rather have the State be the primary agency in complaint resolution.

BEH apparently has arbitrarily defined what standards an effective complaint process must meet—standards which are not public and, from the evidence I can gather, not uniform.

And finally, BEH apparently will not accept assurances that the State will carry out its responsibilities under the plan, but has shown its distrust of at least our department by insisting on completed action.

Mr. Chairman, I frankly am very disturbed that after all we have been doing that someone here in Washington would assume that they care more about our children than we do. I resent it.

In the previous testimony, I have provided a discussion of the problems which are generated by the mandate for State education agencies. I would like now to discuss the problems we see with coordination among Federal agencies.

Who is in charge of insuring the delivery of services to handicapped children—the Office of Civil Rights or the Bureau of the Handicapped?

What happens when they do not agree on what must be done? Is the delivery of educational services to be carried out in an adversarial role or a cooperative role?

Must parent, school administrators, and teachers be adversaries, or can we have a system in which the entire community, parents, teachers, administrators, students, and others, work cooperatively to achieve the desired educational results?

Our funding problem is well known to this committee. The authorization levels of Public Law 94-142, while, in our estimation, reflecting the desired Federal response to a real need, also reflect unreality as far as likely congressional appropriations.

Thus, in a way, the authorization levels have created false expectations among schools, parents, and children.

Further, given the fiscal situation in my State and the possibility of even more Draconian revenue limits being enacted by voters in the near future, we are likely to be faced with significant difficulties in funding the Public Law 94-142 mandates with State and local funds. Therefore, it is my belief that the Congress should appropriate funds to meet the authorized levels of the law.

It could be stated that many of the above are just bureaucratic arguments, but that is not accurate.

We are talking about the fundamental issues of who controls education, who pays for it, who must have equal access to it, and how such access will be provided. We are talking about the quality of education. We are talking about a partnership to provide the necessary and needed services to handicapped children.

In considering the last point, I must admit to you that I come from the "old school," that school which would say to the Congress of the United States, the administration, the State boards of education, the legislature, and the Governors: "Tell us what you want done and when you want it done, but do not tell us how to do it."

I believe the specificity and level of detail required by BEH of the State of California with regard to the provision of related services and with regard to the State regulation of complaint procedures represents overregulation by BEH and represents too much of telling us how rather than what and when.

I do not believe the Congress intended that approval of a State's annual plan providing for services to over 300,000 children, with a Federal allocation of $72 million, should be held up until every outstanding complaint in the State has been resolved.

I believe the Congress never intended plan approval and enforcement and compliance processes which were inconsistent as they were applied among States, and which are unlimited in length.

It is my belief that Congress intended none of these outcomes. It is also my belief that it will take action by the Congress to make clear that the BEH plan approval process is unsatisfactory; to define what the Congress intends related services to mean and to allow greater flexibility for States to provide such services in a manner in concert with State laws; to describe more specifically what controls the Congress intends for State educational agencies to have over other agencies; to clarify congressional desires with

regard to implementation of section 504 and Public Law 94-142, and the different executive agencies involved therein; to make more clear the fiscal responsibilities for providing special education and related services.

Mr. Chairman, I wish to reaffirm my commitment to the concepts of Public Law 94-142 and section 504. I have devoted and will continue to devote my energies to implementing the provisions of Public Law 94-142 and section 504. I can only hope that the future will bring closer Federal-State coordination and cooperation, and not further adversarial relationships.

I can only ask you and the Congress to help the States and the new Department of Education to understand what you would like us to do, who you believe should do it, and when you want it done.

I would only urge you to let the State and local education agencies determine how to do it.

Thank you very much.

[The prepared statement of Mr. Riles follows:]

TESTIMONY OF WILSON RILES, SUPERINTENDENT OF PUBLIC INSTRUCTION, CALIFORNIA STATE DEPARTMENT OF EDUCATION

MR. CHAIRMAN, THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO TESTIFY WITH REGARD TO THE ADMINISTRATION AND IMPLEMENTATION OF PL 94-142 AND ASSOCIATED REGULATIONS IS GREATLY APPRECIATED.

AS YOU MAY BE AWARE, THE STATE OF CALIFORNIA HAS BEEN AND IS ONE OF THE PRIMARY SUPPORTERS OF THE CONCEPTS UNDERLYING PL 94-142. YOU MAY RECALL, MR. CHAIRMAN, THAT WE TESTIFIED BEFORE THE CONGRESS STRONGLY IN SUPPORT OF THE PASSAGE OF THE LAW AND, AFTER ITS ENACTMENT, WE HAVE BEEN IN THE FOREFRONT OF THOSE STATES WHICH HAVE UPHELD PL 94-142 AND WHICH HAVE CLEARLY BELIEVED AND HAVE STATED THAT ITS PROVISIONS WERE IMPLEMENTABLE.

EVEN PRIOR TO THE ENACTMENT OF PL 94-142, WE HAD BEGUN TO IMPLEMENT THE CALIFORNIA MASTER PLAN FOR SPECIAL EDUCATION WHICH WE BELIEVE REPRESENTS ONE OF THE BEST VEHICLES FOR THE IMPLEMENTATION OF THE SPIRIT AND INTENT OF PL 94-142.

THE MASTER PLAN FOR SPECIAL EDUCATION CALLED FOR THE UNLABELLING OF CHILDREN. IT SET INTO PLACE THE IDEA OF AN INDIVIDUALIZED EDUCATION PLAN FOR EACH HANDICAPPED CHILD--I.E., THE EDUCATION SERVICES FOR EACH CHILD SHOULD BE SPECIFICALLY TAILORED TO MEET HIS OR HER NEEDS.

THE MASTER PLAN REQUIRED INCREASED STATE EXPENDITURES FOR SPECIAL EDUCATION. AND, IN THE LAST YEAR, MY STATE HAS DEDICATED OVER $900 MILLION STATE AND LOCAL DOLLARS TO PROVIDE THE NECESSARY AND NEEDED SERVICES TO ASSIST HANDICAPPED CHILDREN.

SOME STATES HAVE NOT BEEN ACTIVE IN THE IDENTIFICATION OF HANDICAPPED CHILDREN. IN CALIFORNIA, OUR SEARCH AND SERVE

ACTIVITIES HAVE BEEN AGGRESSIVE AND CONSTANT. WE HAVE NOW IDENTIFIED OVER 340,000 HANDICAPPED CHILDREN IN THE STATE; THE HIGHEST NUMBER OF HANDICAPPED CHILDREN IDENTIFIED BY ANY STATE IN THE NATION.

OUR LEVEL OF COMMITMENT, BOTH WITH REGARD TO STATE LAW, STATE ADMINISTRATION, AND STATE FUNDS, AND WITH REGARD TO SUPPORT FOR THE SPIRIT AND INTENT OF PL 94-142, CANNOT BE QUESTIONED.

I COME BEFORE YOU TODAY, MR. CHAIRMAN, IN THE SPIRIT OF CONTINUING THAT STRONG COMMITMENT TO THAT LAW BY OFFERING TO YOU OUR SUGGESTIONS FOR IMPROVING THE OPERATION AND ADMINISTRATION OF THAT LAW.

WE AND OTHER STATES HAVE HAD OUR PROBLEMS WITH REGARD TO THE PROGRAM WHICH I WILL OUTLINE AT SOME LENGTH.

HOWEVER, I WISH TO MAKE IT CLEAR FROM THE OUTSET THAT OUR PROBLEMS HAVE NOT BEEN WITH THE LAW. WE ARE NOT HERE TO TESTIFY THAT THE LAW SHOULD BE REDONE.

WE ARE HERE TO TESTIFY ABOUT THE PROBLEMS WE HAVE HAD WITH THE ADMINISTRATION AND IMPLEMENTATION OF THE LAW AND SUGGEST WAYS THE CONGRESS COULD ASSIST IN IMPROVING THAT ADMINISTRATION AND IMPLEMENTATION.

CALIFORNIA, AS WELL AS OTHER STATES (AS I AM SURE YOU WILL BE HEARING ABOUT FROM THE REPRESENTATIVES OF THE COUNCIL OF CHIEF

STATE SCHOOL OFFICERS), HAS IDENTIFIED FIVE MAJOR ISSUES WITH REGARD TO ADMINISTRATION AND IMPLEMENTATION WHICH I WOULD LIKE TO DISCUSS WITH YOU:

1. THE NEED FOR UNIFORM AND CLEARLY ESTABLISHED POLICIES REGARDING THE PLAN APPROVAL PROCESS

2. THE NEED FOR UNIFORM CRITERIA AND STANDARDS IN AREAS SUCH AS RELATED SERVICES AND COMPLAINT PROCEDURES

3. GREATER CLARIFICATION OF WHAT IS INTENDED BY THE MANDATE THAT STATE EDUCATION AGENCIES ARE RESPONSIBLE FOR THE PROVISION AND SUPERVISION OF ALL EDUCATIONAL SERVICES FOR HANDICAPPED CHILDREN PROVIDED BY OTHER AGENCIES

4. GREATER CONSISTENCY IN THE STANDARDS AND PROCEDURES OF THE FEDERAL OFFICES RESPONSIBLE FOR MONITORING AND ENFORCING PL 94-142 AND SECTION 504, SPECIFICALLY BEH AND OCR.

5. INCREASED FUNDING OF PL 94-142 IN ORDER TO ASSIST STATES SUFFICIENTLY IN MEETING THE STANDARDS MANDATED BY THAT LAW

THIS YEAR, ONCE AGAIN, CALIFORNIA FOUND ITSELF IN THE UNHAPPY POSITION OF HAVING ITS STATE PLAN APPROVED VERY LATE AND THEN ONLY AFTER A TIME-CONSUMING, AGONIZING PROCESS OF NEGOTIATION, RENEGOTIATION, NEGOTIATION, RENEGOTIATION OVER AN 11-MONTH PERIOD.

I REGRET THE FACT IN THIS TESTIMONY I HAVE TO SPEND AS MUCH TIME AS I DO IN DISCUSSING PROCESS ISSUES.

I WOULD MUCH RATHER TALK ABOUT WHAT HAPPENS FOR SUCH CHILDREN. BUT, I BELIEVE THE PROCESS ISSUES I FEEL I MUST DISCUSS DO HAVE SIGNIFICANT IMPACT UPON WHAT HAPPENS FOR CHILDREN.

WITH REGARD TO THE PLAN APPROVAL PROCESS, I FULLY BELIEVE THAT HAD NOT MYSELF AND THE NEW COMMISSIONER OF EDUCATION, DR. WILLIAM SMITH, INTERVENED IN THE PROCESS LAST MONTH, OUR PLAN WOULD STILL NOT BE APPROVED.

THE PRIMARY REASONS FOR OUR DIFFICULTIES, MR. CHAIRMAN, SEEMS TO HAVE ARISEN BECAUSE OF THREE MAIN FACTORS:

- HISTORICALLY, BEH HAS USED THE PLAN APPROVAL PROCESS AS THEIR PRIMARY COMPLIANCE AND ENFORCEMENT MECHANISM.

- IN THIS PARTICULAR YEAR, OUR PLAN APPROVAL PROCESS BECAME ENTANGLED WITH AN ONGOING DISPUTE BETWEEN PARENTS AT ONE SCHOOL AND THE LOCAL OFFICIALS RESPONSIBLE FOR THE DELIVERY OF SERVICES TO THEIR CHILDREN.

- THE ABOVE TWO FACTORS SEEM TO HAVE COMBINED TO CREATE AN ATMOSPHERE OF DISTRUST BETWEEN BEH AND OURSELVES AND BETWEEN BEH AND LOCAL SCHOOL OFFICIALS IN CALIFORNIA. THIS ATMOSPHERE MADE GOOD FAITH NEGOTIATIONS NEARLY IMPOSSIBLE.

IT IS MY UNDERSTANDING THAT THE STATE PLAN WE ARE TO SUBMIT NEXT MONTH IS TO BE A THREE-YEAR STATE PLAN. I ASSUME THAT IT

WILL NOT BE THE COMPLIANCE DEVICE AND THAT THE BUREAU WILL HAVE TO DEVELOP A NEW COMPLIANCE AND ENFORCEMENT MECHANISM.

I HOPE THAT THE NEW THREE-YEAR PLAN APPROVAL PROCESS WILL HAVE TIME LINES THAT APPLY NOT ONLY TO STATES BUT ALSO TIME LINES AS TO WHEN THE FEDERAL OFFICIALS MUST EITHER APPROVE OR DISAPPROVE THE PLAN.

FURTHER, I WOULD EXPECT THE THREE-YEAR PLAN APPROVAL PROCESS TO INCLUDE CLEAR UNIFORM STANDARDS AND CRITERIA FOR THE PLANS. WE SHOULD BE ABLE TO HAVE OUR PLAN (AND ALL OTHERS) REVIEWED AGAINST KNOWN AND PUBLISHED STANDARDS AND CRITERIA CONSISTENTLY APPLIED AND IN A TIME CERTAIN.

HOWEVER, I REMAIN CONCERNED AS TO WHAT THE NEW COMPLIANCE AND ENFORCEMENT MECHANISM AND PROCESSES WILL BE.

AS FAR AS I KNOW, BEH HAS NOT ASKED STATE OR LOCAL EDUCATION AGENCIES TO PARTICIPATE IN DISCUSSIONS OF WHAT THE NEW COMPLIANCE AND ENFORCEMENT STRUCTURE SHOULD BE OR HOW IT SHOULD WORK.

I WOULD HOPE THIS COMMITTEE WOULD REQUEST THAT BEH CONSULT WITH STATE AND LOCAL OFFICIALS AS WELL AS PARENTS AND ADVOCACY GROUPS AND OTHER INTERESTED PARTIES.

• • •

MR. CHAIRMAN, HAVING OUTLINED MY CONCERNS WITH REGARD TO SYSTEMIC PROBLEMS OF THE CURRENT AND, PERHAPS, FUTURE BEH PLAN APPROVAL PROCESSES, I WOULD LIKE NOW TO DISCUSS THE ISSUES WITH REGARD TO RELATED SERVICES AND COMPLAINT PROCEDURES.

PUBLIC LAW 94-142 IS NOT CLEAR WITH REGARD TO THE DEFINITION OF RELATED SERVICES NOR ARE THE REGULATIONS; THEREFORE, DISPUTES SUCH AS THAT BETWEEN OURSELVES AND BEH AROSE AS DID DISPUTES AMONG LOCAL DISTRICTS AND PARENTS AND OTHER SERVICE DELIVERY AGENCIES.

THESE DISPUTES ARISE BECAUSE THERE ARE DIFFERING ANSWERS TO THE FOLLOWING QUESTIONS AND DIFFERING INTERPRETATIONS OF WHAT THE CONGRESS INTENDED:

- WHAT IS THE DEFINITION OF RELATED SERVICES AND WHEN IS A RELATED SERVICE REQUIRED IN ORDER FOR A CHILD TO BENEFIT FROM SPECIAL EDUCATION?

FOR INSTANCE, IS OT/PT ALWAYS A RELATED SERVICE TO BE PROVIDED BY AN EDUCATIONAL AGENCY (A POSITION TAKEN BY BEH DURING OUR DISPUTE WITH THEM), OR ARE THERE EXCEPTIONS TO THAT RULE? IF SO, WHAT EXCEPTIONS? WHAT ABOUT PSYCHOTHERAPY?

- WHAT LEVEL OF RESPONSIBILITY MUST THE EDUCATIONAL SYSTEM ASSUME FOR RELATED SERVICES PROVIDED BY OTHER INDEPENDENT STATE, LOCAL, AND/OR FEDERAL AGENCIES?

THE STATE DEPARTMENT OF EDUCATION IS ALREADY RESPONSIBLE TO ENSURE NECESSARY RELATED SERVICES ARE PROVIDED, BUT WHAT EXACTLY DOES THAT MEAN? DOES IT MEAN THAT THE CONGRESS INTENDED THAT EDUCATIONAL AUTHORITIES HAVE THE RIGHT AND THE REQUIREMENT TO CHANGE OR MODIFY A MEDICALLY PRESCRIBED COURSE OF TREATMENT--SUCH AS PSYCHIATRIC CARE? IN A BROADER CONTEXT, HOW WILL THE STATE

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EDUCATION AGENCY BE HELD ACCOUNTABLE TO ENSURE THE COMPLIANCE OF OTHER STATE AND LOCAL AGENCIES WITH ALL APPLICABLE FEDERAL AND STATE STATUTES?

- MUST THE EDUCATIONAL SYSTEM ALWAYS PAY FOR RELATED SERVICES DESIGNATED IN A STUDENT'S IEP?

IF OTHER SOCIAL SERVICE PROVIDERS ARE NOT REQUIRED TO PROVIDE RELATED SERVICES TO ALL THE POPULATION IN NEED, IT SEEMS TO ME THAT THERE IS AN INCENTIVE BUILT IN, IN THESE SITUATIONS, FOR OTHER AGENCIES TO SHIFT THEIR FUNDS AWAY FROM HANDICAPPED CHILDREN AS THEY ASSUME EDUCATION MUST PICK UP THE COSTS.

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THE SECOND ISSUE WE EXPERIENCED PROBLEMS WITH BEH IN REGARD TO OUR PLAN APPROVAL WAS THE MECHANISM, PROCESSES, AND TIME LINES FOR COMPLAINT RESOLUTION.

ALTHOUGH BOTH THE LAW AND THE REGULATIONS ARE QUITE GENERAL IN THE REQUIREMENT FOR AN EFFECTIVE COMPLAINT RESOLUTION PROCESS, BEH HAS BEEN QUITE SPECIFIC AND AT DIFFERENT TIMES IN THE NEGOTIATION PROCESS WITH US HAS TAKEN THE FOLLOWING POSITIONS:

- STATES MUST <u>DIRECTLY</u> REVIEW, INVESTIGATE, AND ACT UPON ALL COMPLAINTS; REFERRAL OF COMPLAINTS TO SCHOOL DISTRICT FOR LOCAL RESOLUTION WAS NOT ACCEPTABLE. (THIS BEH POSITION WAS LATER MODIFIED.)

- A COMPLAINT RESOLUTION PROCESS WHICH TOOK MORE THAN 60 <u>CALENDAR</u> DAYS COULD NOT BE ADJUDGED EFFECTIVE.

- STATE ASSURANCES THAT STATE REGULATIONS WOULD BE CHANGED WERE NOT SATISFACTORY FOR PLAN APPROVAL; THE ACTUAL REGULATION HAD TO BE IN PLACE BEFORE APPROVAL COULD EVEN BE RECOMMENDED.

WHAT DISTURBS ME WITH REGARD TO THESE ISSUES IS THREE-FOLD:

1. BEH WOULD PREFER NOT TO ENCOURAGE COMPLAINTS TO BE RESOLVED LOCALLY BUT WOULD RATHER STATE AGENCIES BE THE PRIMARY AGENCY IN COMPLAINT RESOLUTION.

2. BEH APPARENTLY HAS ARBITRARILY DEFINED WHAT STANDARDS AN EFFECTIVE COMPLAINT PROCESS MUST MEET--STANDARDS WHICH ARE NOT PUBLIC AND, FROM THE EVIDENCE I CAN GATHER, NOT UNIFORM.

3. BEH, AT LEAST WITH REGARD TO CALIFORNIA, WILL NOT ACCEPT ASSURANCES OF ACTIONS WHICH WILL BE UNDERTAKEN BY THE STATE BUT HAS SHOWN ITS DISTRUST OF OUR DEPARTMENT BY INSISTING ON COMPLETED ACTION.

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IN THE PRECEDING TESTIMONY, I HAVE ALREADY PROVIDED BRIEF DISCUSSION OF THE PROBLEMS WHICH ARE GENERATED BY THE MANDATE FOR STATE EDUCATION AGENCIES; THEREFORE, I SHOULD LIKE NOW TO DISCUSS THE PROBLEMS WE SEE WITH COORDINATION AMONG FEDERAL AGENCIES.

WHO IS IN CHARGE OF ENSURING THE DELIVERY OF SERVICES TO HANDICAPPED CHILDREN--THE OFFICE OF CIVIL RIGHTS OR THE BUREAU? WHAT HAPPENS WHEN THEY DO NOT AGREE ON WHAT MUST BE DONE? IS

THE DELIVERY OF EDUCATIONAL SERVICES TO BE CARRIED OUT IN AN ADVERSARIAL ROLE OR A COOPERATIVE ROLE? MUST PARENTS, SCHOOL ADMINISTRATORS, AND TEACHERS BE ADVERSARIES? OR, CAN WE HAVE A SYSTEM IN WHICH THE ENTIRE COMMUNITY--PARENTS, TEACHERS, ADMINISTRATORS, STUDENTS, AND OTHERS--WORK COOPERATIVELY TO ACHIEVE THE DESIRED EDUCATIONAL RESULTS?

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OUR FUNDING PROBLEM IS WELL KNOWN TO THIS COMMITTEE. THE AUTHORIZATION LEVELS OF PL 94-142 WHILE, IN OUR ESTIMATION, REFLECTING THE DESIRED FEDERAL RESPONSE TO A REAL NEED, THEY ALSO REFLECT UNREALITY AS FAR AS LIKELY CONGRESSIONAL APPROPRIATIONS. THUS, IN A WAY, THE AUTHORIZATION LEVELS HAVE CREATED FALSE EXPECTATIONS AMONG SCHOOLS, PARENTS, AND CHILDREN.

FURTHER, GIVEN THE FISCAL SITUATION IN MY STATE AND THE PROSPECT OF EVEN MORE DRACONIAN REVENUE LIMITS BEING ACCEPTED BY VOTERS IN THE NEAR FUTURE, WE ARE LIKELY TO BE FACED WITH SIGNIFICANT DIFFICULTIES IN FUNDING THE PL 94-142 MANDATES WITH STATE AND LOCAL FUNDS. THEREFORE, IT IS MY BELIEF THAT THE CONGRESS SHOULD APPROPRIATE MORE FUNDS TO MEET THE AUTHORIZED LEVELS OF THE LAW.

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IT COULD BE STATED THAT MANY OF THE ABOVE ARE JUST BUREAUCRATIC ARGUMENTS, BUT THAT IS NOT ACCURATE.

WE ARE TALKING ABOUT THE FUNDAMENTAL ISSUES OF WHO CONTROLS EDUCATION, WHO PAYS FOR IT, WHO MUST HAVE EQUAL ACCESS TO IT, AND

HOW SUCH ACCESS WILL BE PROVIDED. WE ARE TALKING ABOUT THE QUALITY OF EDUCATION. WE ARE TALKING ABOUT A PARTNERSHIP TO PROVIDE THE NECESSARY AND NEEDED SERVICES TO HANDICAPPED CHILDREN.

IN CONSIDERING THE LAST POINT, I MUST ADMIT TO YOU THAT I COME FROM THE "OLD SCHOOL." THE SCHOOL WHICH WOULD SAY TO THE CONGRESS OF THE UNITED STATES, THE ADMINISTRATION, THE STATE BOARDS OF EDUCATION, THE LEGISLATURE, AND THE GOVERNORS: "TELL US WHAT YOU WANT DONE AND WHEN YOU WANT IT DONE, BUT DON'T TELL US HOW TO DO IT!"

I BELIEVE THE SPECIFICITY AND LEVEL OF DETAIL REQUIRED BY BEH OF THE STATE OF CALIFORNIA WITH REGARD TO THE PROVISION OF RELATED SERVICES AND WITH REGARD TO THE STATE REGULATION OF COMPLAINT PROCEDURES REPRESENTS OVERREGULATION BY BEH AND REPRESENTS TOO MUCH OF TELLING US "HOW" RATHER THAN "WHAT" AND "BY WHEN."

I DO NOT BELIEVE THE CONGRESS INTENDED THAT APPROVAL OF A STATE'S ANNUAL PLAN PROVIDING FOR SERVICES TO OVER 300,000 CHILDREN FOR OVER $72 MILLION SHOULD BE HELD UP UNTIL ALL OUTSTANDING COMPLAINTS IN THE STATE ARE RESOLVED.

I BELIEVE THE CONGRESS DID NOT INTEND A PROCESS TO BE IMPLEMENTED WHICH WOULD ALLOW ANNUAL PLAN APPROVAL ONLY IF THE EXACT DOCUMENTS WERE ON HAND IN WASHINGTON.

I BELIEVE THE CONGRESS NEVER INTENDED PLAN APPROVAL AND ENFORCEMENT AND COMPLIANCE PROCESSES WHICH WERE INCONSISTENT AS THEY WERE APPLIED AMONG STATES, AND WHICH ARE UNLIMITED IN LENGTH.

IT IS MY BELIEF THAT CONGRESS INTENDED NONE OF THESE OUTCOMES.

IT IS ALSO MY BELIEF THAT IT WILL TAKE ACTION BY THE CONGRESS:

- TO MAKE CLEAR TO BEH THAT ITS PLAN APPROVAL PROCESS IS UNSATISFACTORY.
- TO DEFINE WHAT THE CONGRESS INTENDS RELATED SERVICES TO MEAN AND TO PROVIDE GREATER FLEXIBILITY FOR STATES TO PROVIDE SUCH SERVICES IN A MANNER IN CONCERT WITH STATE LAWS
- TO DESCRIBE MORE SPECIFICALLY WHAT CONTROLS THE CONGRESS DESIRES THAT STATE EDUCATIONAL AGENCIES SHOULD HAVE OVER OTHER STATE AGENCIES
- TO CLARIFY CONGRESSIONAL DESIRES WITH REGARD TO IMPLEMENTATION OF SECTION 504 AND PL 94-142, AND THE DIFFERENT EXECUTIVE AGENCIES INVOLVED THEREIN
- TO MAKE MORE CLEAR THE FISCAL RESPONSIBILITIES FOR PROVIDING SPECIAL EDUCATION AND RELATED SERVICES.

I WISH TO REAFFIRM MY COMMITMENT TO THE CONCEPTS OF PL 94-142 AND SECTION 504. I HAVE DEVOTED AND WILL CONTINUE TO DEVOTE MY ENERGIES TO IMPLEMENTING THE PROVISIONS OF PL 94-142 AND SECTION 504.

I CAN ONLY HOPE THAT THE FUTURE WILL BRING CLOSER FEDERAL-STATE COORDINATION AND COOPERATION--NOT FURTHER ADVERSARIAL RELATIONSHIPS.

I CAN ONLY ASK YOU AND THE CONGRESS TO HELP THE STATES AND THE NEW DEPARTMENT OF EDUCATION TO UNDERSTAND WHAT YOU WOULD LIKE US TO DO, WHO YOU BELIEVE SHOULD DO IT, AND WHEN YOU WANT IT DONE. I WOULD ONLY URGE YOU TO LET THE STATE AND LOCAL EDUCATION AGENCIES DETERMINE HOW TO DO IT.

Senator RANDOLPH. Thank you very much. I have listened very carefully to what you have indicated is the California position. Is this position the position of the State of California as reflected through its school system, through you as the head of the system?

Mr. RILES. Yes, sir.

Senator RANDOLPH. Give us the process by which that position is developed.

Mr. RILES. We have in our State appointed a special education commission, which meets monthly, which is advisory to the State board of education and to the department. They go through our approval process and plan. Then we have the State board of education approve the plan. Naturally, we are in touch with all of the school people, all of the directors, and so what we are doing here has been approved by them and they were alarmed about what happened—except for one school.

So I believe, Mr. Chairman, you will find that the commitment that I have indicated represents overwhelmingly the attitude of the parents of handicapped children, as well as those in the schools which operate the programs for them.

Senator RANDOLPH. A further question. In California, as I understand it, the superintendent of schools is elected; is that correct?

Mr. RILES. Yes. That is my office, sir.

Senator RANDOLPH. As you know, there are States where the superintendent of schools is an appointed rather than an elected office. In fact, that goes to other offices, as well. In West Virginia, we elect our commissioner of agriculture, and in some States, that is an appointed job.

I just wanted to check again—you are called the commissioner?

Mr. RILES. No. In California, I am called the superintendent of public instruction.

Senator RANDOLPH. Superintendent of public instruction. That is the position for which you appear on the ballot if you are a candidate for office?

Mr. RILES. Yes, sir.

Senator RANDOLPH. Now, I have a few questions that I shall defer until after Senator Cranston has questioned you.

Senator CRANSTON. Thank you very much. That is very good of you, because I do have to scamper shortly to another hearing.

California has for a long time worked to provide an appropriate public education for special children. In fact, California's early efforts in this area served as a model for Public Law 94-142.

While I recognize we have a long way to go, I am pleased with the strides California has made in the effort to educate children with special needs, and I think we are helping set an example for the entire Nation.

How successful do you feel the program has been, Wilson, in achieving its stated mandate, that is, making an appropriate public education available to special children?

Mr. RILES. Are you referring, sir, to the master plan or Public Law 94-142?

Senator CRANSTON. The law.

Mr. RILES. As I indicated in the testimony, Senator Cranston, we are supportive of the law and the intent behind it. We were in the beginning; we testified for it. We thought it was time to really

address the needs of youngsters who had been overlooked, shoved aside, put in closets, and so on.

And as we developed our master pian, we had this law in mind. It subsequently passed, so they meshed together, and we have been dedicated and committed to implementing it.

I feel that we are doing a good job. I am proud of the job that we are doing. We are certainly not perfect; we do not have enough money in every instance. My frustration is the bureaucratic entanglements that we run into here. And if it is not straightened out, the whole program and the children will begin to suffer by it.

I understand the bureaucracies; I work with them. But I have to tell you in all honesty that I have not run into anything like this before.

Senator CRANSTON. In your testimony, you advocate that the Bureau of Education for the Handicapped adopt a uniform policy for plan approval, yet you acknowledge that since all States have different departmental structure, it is important that the BEH remain flexible in its procedure.

It has been my impression that BEH has been working to achieve just such a balance between needed discussion and uniform policy.

In what way would you suggest that BEH alter the balance that it now has between those two considerations?

Mr. RILES. Well, one, I do know that States differ, so there has to be some flexibility; large States, small States, some are further developed to meet the needs, and so on. But the law is a law, and I feel that Congress passed a good law, and they are regulations which we can read, but I am disturbed at how an agency can make law on the spot; in other words, add to the regulations, add to the law, and then virtually hijack a plan. And if California is doing one thing and New York another—and frankly, until we had some of our deputies meet in Dallas, we really did not know how bad it was. I found several States going through the same frustration, and we were not communicating with each other.

I would like to say one thing. The way my department and our board work with local school districts, once we have a State law and make regulations, we establish some guidelines for them to follow, and they work within those guidelines. I have not seen any guidelines for BEH. If there are any, I do not know about them.

Senator CRANSTON. Thank you very much, Wilson. I have some other questions, but I think I will have to submit them in writing, because I have to go to another hearing.

Mr. RILES. We would be very delighted to respond.

Senator CRANSTON. Thank you very much. Good to see you, all of you, and thank you, Jennings.

Senator RANDOLPH. Thank you very much, Senator Cranston. The understanding is that you will submit questions for the printed record that will be available to the public. We, of course, have that same rule apply to the members of the subcommittee who are not present this morning.

[The following material was subsquently received for the record:]

WILSON RILES
Superintendent of Public Instruction
and Director of Education

STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO 95814

April 1, 1980

Mr. Jennings Randolph, Chairman
Subcommittee on the Handicapped
United States Senate
Committee on Labor and Human Resources
Washington, D.C. 20510

Dear Chairman Randolph:

Attached are my responses to the questions that you sent me on March 7, 1980. I hope these responses are useful to you and members of the Committee in determining your future course of action with regard to Public Law 94-142, Section 504, and related regulations.

If I may be of further assistance, please let me know.

With warm regards,

Wilson Riles

WILSON RILES

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QUESTIONS FOR SUPERINTENDENT RILES FROM SENATOR CRANSTON

1. I understand that the Bureau of Education for the Handicapped is now working on a plan to move to a three-year planning cycle.

   A. Do you think this is a good idea?

   B. What kinds of suggestions has your Department made to the Bureau of Education for the Handicapped regarding this planned change in procedure?

Answer:

1.A. California is supportive of the three-year planning cycle. It is important, however, that the three-year program plan be just that. Currently, the term "Program Plan" is somewhat of a misnomer. Annual Program Plans have been used by BEH as the enforcement and compliance mechanism for PL 94-142 and had required that the plan demonstrate that established state laws, regulations and policies comply with that law. It is our assumption that BEH, in moving to a three-year planning process, will revise the processes and mechanisms for enforcement and compliance of PL 94-142 and associated statutes and regulations. If our assumption is correct, we strongly support a three-year planning cycle.

1.B. To my knowledge, we were not invited as a state agency to provide input of the proposed change in the planning cycle, though we would have supported the change. We would recommend that (1) BEH plan approval procedures be clearly spelled out in CFR to ensure consistency across states and timely review and approval by the Department of Education; and (2) the three-year plan not be used as BEH's compliance and enforcement device.

2. I am aware that there has been some difficulty arising from the fact that, while SEAs are responsible, under 94-142, for assuring that special children receive a free and appropriate education, they do not always have control over all of the state agencies which are involved in accomplishing that goal.

   A. I think it would be helpful for the subcommittee to learn how this problem has manifested itself in California, and to learn what you have done to remedy this difficulty.

   B. In situations like yours, where there is a split in responsibility for providing certain related services, would it be helpful to have the law require the Governor to sign off on the provisions in the plan governing the provision of those services?

Answer:

2.A. Rather than rendering a chronological account of our specific problem with one interagency agreement, it perhaps would be more helpful to look generally at problems surrounding state education agency supervision as they may affect all states.

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QUESTIONS FOR SUPERINTENDENT RILES FROM SENATOR CRANSTON

The supervisory role of the state education agency creates difficulties because of administration (bureaucratic) barriers, legislative and regulatory conflicts and, within the framework of PL 94-142, the vagueness in the definitions of related services.

Though the administrative barriers are those with which we all have the least sympathy and patience, they are very real. In California, the state education agency does not have authority over health programs, for example, and therefore interagency agreements for the provision of services must be negotiated between the Department of Education and the health agencies.

We have two types of agreements--direct services and related services. For direct service agreements, i.e., state hospital programs, the administrative barriers are lessened since clearly in the education of institutional children PL 94-142 must be implemented.

For related service agreements, i.e., California Childrens Services, mental health, social services, medi-cal, our agreements are essentially requests to other agencies to help us provide related services to handicapped children. In other words, the educational agency must assure provision of the service; if we can utilize their funding sources and services, fine. But when informed that when they sign the agreement that individualized education programs, parent consent, due process, and all requirements of PL 94-142 must be adhered to by them, other agencies prefer to continue business as usual.

There are significant legislative, regulatory, and professional requirements at both the state and federal levels among different social services agencies. Some of these requirements cause difficult barriers toward complying with the provisions of PL 94-142. And the bottom line is that when other agencies cannot comply, the educational agency must see to it that the appropriate services are provided in compliance with the law.

As an example, the legally established eligibility criteria for California Childrens Services is not as broad as the eligibility criteria for PL 94-142. Unless a child is physically handicapped, California Childrens Services cannot provide services. One educational strategy now used is to ameliorate specific learning disabilities through physical therapy/occupational therapy-type activities. Since California Childrens Services cannot provide therapy to children with learning disabilities who are not also physically handicapped, the local education agency must provide the physical therapy/occupational therapy service if the individualized education program team determines it is necessary. Similar examples could be given for regional center, mental health and other programs.

Unfortunately, the power of state education agency supervision and interagency agreements is seriously misunderstood by consumers and others who think that such can supercede federal and state laws and regulations.

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QUESTIONS FOR SUPERINTENDENT RILES FROM SENATOR CRANSTON

Finally, because the PL 94-142 definition of "related services" is so broad, we could find ourselves responsible for programs such as occupational therapy/physical therapy that are beyond our expertise and traditional roles as educators, and which are properly the responsibility of the medical-health treatment system.

The concept of one agency being responsible for the education of handicapped children is sound, but not without a clear understanding of where education begins and ends and where funding responsibility lies. We have in California taken the responsibility. We are slowly, but systematically, eroding the administrative barriers. We are studying and identifying specific legislative conflicts and we are working with our state Legislature to attempt to remediate some of these conflicts.

Answer:

2.B. Several bills have been introduced into the state Legislature to address the state education agency supervisory responsibilities and the responsibilities of other agencies. Two are attached for your review.

As to your suggestion, OMB currently requires the Governor and Attorney General's sign-off of the Annual Program Plan. We have an extensive interagency review process of all federal plans through our Governor's Office of Planning and Research.

As pointed out earlier, however, until a thorough study of all federal and state laws is completed, a clear definition of agency responsibility developed, and until each state establishes state-specific statutory authority for supervision of educational programs, the interagency relationships will be less than ideal.

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SENATE BILL No. 1616

Introduced by Senator Watson
(Principal coauthor: Assemblyman Mori)
(Coauthors: Senators Keene, Marks, Petris, Rains, Rodda, and Sieroty)

February 28, 1980

An act to add Article 9.5 (commencing with Section 56170) to Chapter 1 of Part 30 of the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

SB 1616, as introduced, Watson. Handicapped children—education and services: federal funds—coordination.

Existing statutes prescribe various duties of the Department of Education with respect to special education.

This bill would require the Department of Education to be responsible for assuring provision of, and supervision of, education and services to handicapped children pursuant to the federal Education of all Handicapped Children Act, as specified, require notification by the department to the Joint Legislative Budget Committee of failures of any state agency, as determined by the department, to provide services to handicapped children in accordance with federal law and for related withholding of administrative funds.

This bill would also require specified reports by state agencies of disapprovals of applications for specified federal funds to such committee, related summaries to specified legislative members and committees, and state agency plans for fostering expeditious receipt of related federal funds and for resolving related disagreements and lack of coordination among public entities.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Article 9.5 (commencing with Section 56170) is added to Chapter 1 of Part 30 of the Education Code, to read:

Article 9.5. Education and Services for Handicapped Children

56170. The Department of Education shall be responsible for (a) assuring provision of and (b) supervision of education and related services to handicapped children in accordance with Public Law 94-142, the Education of All Handicapped Children Act. Services included under this responsibility shall include, but need not be limited to: transportation, and such developmental, corrective, and other supportive services including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical diagnostic and counseling services as may be required to assist a handicapped child to benefit from special education, and shall include the early identification and assessment of handicapping conditions in children.

56171. If any state agency fails to provide services to handicapped children in accordance with requirements of federal law and as determined necessary by the State Department of Education, such agency and the reasons for lack of provision shall be identified jointly by the State Department of Education and the applicable state agency. A report of such lack of provision of services shall be made to the Joint Legislative Budget Committee within 15 calendar days of identification of such problem. The failure to provide necessary services shall constitute grounds for withholding of payment of administrative funds to the applicable state agency by the Controller if so recommended by the Joint Legislative Budget Committee.

56172. It is the intent of the Legislature to assure receipt of federal funding by the State of California. It is

also the intent of the Legislature to assure that if lack of interagency agreement or lack of coordination between state agencies jeopardizes state receipt of federal funds, including, but not limited to, funds available for services to handicapped children, an expeditious process shall exist for resolving such interagency matters.

It is further the intent of the Legislature that there shall be a single line of responsibility with regard to the education of all handicapped children. The Department of Education shall be responsible for supervising education and related services for handicapped children in accordance with federal requirements under the Education for All Handicapped Children Act, Public Law 94-142.

56173. If any state agency applies for federal funds to meet a mandatory responsibility under federal or state law and such application is not approved, the state agency shall submit to the Joint Legislative Budget Committee within 15 calendar days of its receipt of notification of the lack of approval of its application: (a) an identification of the federal program for which the application was not approved and the federal administering agency, (b) an estimate of the amount of funds affected by the lack of approval of the state agency application, (c) an indication of the reason or reasons the application was not approved, and (d) a description of any issues pertaining to responsibilities or actions of other state or local agencies which have affected the lack of approval.

56174. The Joint Legislative Budget Committee shall submit to each member of the appropriate legislative policy committees and to each member of the legislative fiscal committees, within 10 calendar days of receipt of notification of a lack of approval of an application for federal funds reported to it pursuant to Section 56173, a summary of the information specified in subdivisions (a) through (d) of Section 56173.

56175. Any state agency which has not received federal agency approval of an application for funds as described in Section 56173 shall submit to the Joint

Legislative Budget Committee within 30 calendar days of receipt of notification of such lack of approval a plan: (a) for fostering expeditious receipt of the affected federal funds; and (b) for resolving any disagreement or lack of coordination among state agencies or among local agencies which has interfered with federal agency approval of the application for federal funds.

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CALIFORNIA LEGISLATURE—1979-80 REGULAR SESSION

ASSEMBLY BILL No. 2394

Introduced by Assemblywoman Egeland
(Coauthor: Senator Rodda)

February 20, 1980

REFERRED TO COMMITTEE ON EDUCATION

An act to add Article 11 (commencing with Section 56200) to Chapter 1 of Part 30 of the Education Code, relating to funding for handicapped children.

LEGISLATIVE COUNSEL'S DIGEST

AB 2394, as introduced, Egeland (Ed.). Handicapped children: funding.

Existing law provides for the education of handicapped children. Under existing law, various federal and state moneys are available for funding education and related services for such children. However, no program exists to coordinate all available funding sources or to maximize state use of available federal funds.

This bill would establish such a program, on a demonstration basis, for at least a 3-year period, and would require the Department of Education to administer and the Office of Planning and Research to assist in coordinating such program.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Article 11 (commencing with Section 56200) is added to Chapter 1 of Part 30 of the Education Code, to read:

Article 11. Joint Funding for Education of Handicapped Children Act of 1980

56200. (a) The Legislature hereby finds and declares that numerous federal and state programs make funds available for the provision of education and related services to handicapped children. The Legislature further finds and declares that the state has not maximized the use of available federal funds for provision of such services to these children. The Legislature further recognizes the need to simplify procedures for securing all available funds for services to handicapped children and for utilizing federal financial resources to the greatest possible extent.

(b) It is the intent of the Legislature to establish a demonstration program which provides participating local educational agencies and responsible local agencies with maximum flexibility to secure and utilize all available state and federal funds so as to enable such agencies to meet the needs of handicapped children more effectively and efficiently. Furthermore, it is the intent of the Legislature that the demonstration program provide maximum federal funding to participating local educational agencies and responsible local agencies for the provision of education and related services to handicapped children.

56201. The demonstration program shall provide for all the following:

(a) Participation shall include 10 or fewer entire or partial special education service regions which were operating under the Master Plan for Special Education established pursuant to Chapter 3 (commencing with Section 56300) during fiscal year 1979–80 and school districts or offices of county superintendents of schools,

representing approximately the same enrollment, which were not operating under the Master Plan for Special Education during fiscal year 1979–80. However, the total enrollment of handicapped children in local educational agencies and responsible local agencies participating in the demonstration program shall not exceed 30 percent of the statewide population of handicapped children.

(b) Planning by participating local educational agencies and responsible local agencies shall commence during fiscal year 1980–81.

(c) Implementation of the demonstration program shall commence July 1, 1981, and shall continue through at least July 1, 1984.

(d) The Department of Education shall administer the demonstration program, and, as part of such administration, shall do all the following:

(1) Provide necessary technical assistance to local educational agencies and responsible local agencies.

(2) Establish procedures for such agencies to obtain available federal funds.

(3) Apply for necessary waivers of federal statutes and regulations governing federal education programs that provide education and related services to handicapped children.

(e) The State Board of Education shall grant necessary waivers of applicable state laws and administrative regulations relating to special education programs to participating local educational agencies and responsible local agencies.

(f) The State Departments of Health Services, Mental Health, Developmental Services, Social Services, Rehabilitation, and Employment Development, and the State Council on Developmental Disabilities shall do the following:

(1) Grant necessary waivers of applicable state laws and administrative regulations under their respective jurisdictions to local educational agencies, responsible local agencies, and other agencies.

(2) Apply for necessary waivers of federal statutes and regulations governing federal programs which provide

services to handicapped children and which are under their respective jurisdictions.

(g) The Office of Planning and Research shall coordinate the implementation of the provisions of this article.

56202. (a) The demonstration program shall be evaluated by the body designated by the Legislature to review categorical education programs, pursuant to Sections 62000 to 62006, inclusive, or such other body as designated by the Legislature.

(b) Such evaluation shall examine the implementation, effectiveness, and financial benefits of the demonstration program and shall include, but not be limited to, an examination of all the following:

(1) The improvement in the availability to handicapped children of education and related services provided by public and private agencies.

(2) The increase in the amount of federal funds utilized to provide education and related services to handicapped children and the increase in the proportion of federal funds utilized by participating local educational agencies and responsible local agencies to provide such services to handicapped children.

(3) The increase attributable to this program in the amount of total federal funds received by the state to provide human services.

(4) The reduction in the number of complaints and fair hearings relating to the provision of education and related services required by P.L. 94-142.

(5) The reduction in the number of incidents of noncompliance with P.L. 94-142.

(c) Such evaluation shall include information from all of the following:

(1) Participating local educational agencies and responsible local agencies.

(2) A comparison group of similar nonparticipating local educational agencies and responsible local agencies.

(d) The scope, content, and methodology of the evaluation shall be submitted for review to the Joint Legislative Budget Committee.

(e) A preliminary report of the evaluation shall be submitted to the Legislature no later than January 1, 1982; an interim report no later than January 1, 1983; and a final report no later than January 1, 1984.

56203. (a) The Office of Planning and Research shall establish procedures for development of plans and shall review plans for funds available under all federal programs which may provide services to handicapped children and which are within the jurisdictions of the Departments of Education, Health Services, Mental Health, Developmental Services, Social Services, Rehabilitation, and Employment Development, and the State Council on Developmental Disabilities. Such planning procedures and review shall assure coordination between state agencies and shall assure that applicable plans enable participating local education agencies and responsible local agencies to secure maximum available federal funding, without decreasing funds available to other state and local agencies, under each of the following federal programs:

(1) Education for All Handicapped Children as provided under P.L. 91-230, Education of the Handicapped Act, Title VI, Part B, as amended by P.L. 93-380 and by P.L. 94-142.

(2) Medical Assistance (Medicaid), as provided under the Social Security Act of 1935, Title XIX, as amended.

(3) Early and Periodic Screening, Diagnosis and Treatment as provided under P.L. 74-271, Social Security Act of 1935, Title XIX as amended, Section 1905 (a) (4) (B).

(4) Developmental Disabilities Services as provided under P.L. 91-517, the Developmental Disabilities Services and Construction Act of 1970, as amended by P.L. 94-103 and the Developmental Disabilities Assistance and Bill of Rights Act, as amended by P.L. 95-602, Amendments to the Rehabilitation Act of 1973.

(5) Social Services as provided under P.L. 74-271, Social Security Act of 1935, Title XX, as amended by P.L. 93-647, by P.L. 94-401, P.L. 94-566, and P.L. 95-171.

(6) Crippled Children's Services as provided under

P.L. 74-271, Social Security Act of 1935, Title V, Section 504, as amended.

(7) Vocational Training and Counseling Services as provided under P.L. 94-482, Vocational Educational Act; P.L. 93-112, as amended by P.L. 93-516, the Rehabilitation Act of 1973; and P.L. 93-203, the Comprehensive Employment and Training Act, as amended.

(8) Maternal and Child Health Services, as provided under P.L. 74-271, Social Security Act of 1935, Title V, Section 503, as amended.

(9) Supplementary Security Income, Disabled Children's Program, as provided under P.L. 74-271, Social Security Act of 1935, Title XVI, Section 1615(b) as amended by P.L. 94-566.

(b) In addition to the programs prescribed by subdivision (a), any other programs under which the following services may be provided to handicapped children shall be subject to the review procedure specified in subdivision (a) as conducted by the Office of Planning and Research.

(1) Screening and identification.

(2) Assessment and diagnosis.

(3) Health related services, including, but not limited to, speech pathology and audiological services, physical therapy, occupational therapy, and vision services and therapy.

(4) Psychological counseling.

(5) Mental health services.

(6) Vocationally-related services.

(7) Social services.

(8) Transportation services.

(9) Other services necessary to assist handicapped children in benefitting from their education.

56204. Within 90 days of the effective date of this article, the State Board of Education shall, after consultation with the Office of Planning and Research and the State Departments of Health Services, Mental Health, Developmental Services, Social Services, Rehabilitation, and Employment Development, and the State Council on Developmental Disabilities, issue

regulations for implementation of the provisions of this article, including, but not limited to, regulations to be used by local educational agencies and responsible local agencies, in applying for participation in, and in implementing, the demonstration program. Such regulations shall identify all other administrative regulations relating to education and related services which shall be waived for participating local educational agencies and responsible local agencies. Such regulations shall include, but not be limited to, regulations relating to application, accounting, and reporting procedures for programs which may provide education and related services for handicapped children.

56205. (a) Within 90 days of the effective date of this article, the Department of Education shall issue guidelines to participating local educational agencies and responsible local agencies for implementation of the provisions of this article.

(b) Such guidelines shall include, but not be limited to, the following:

(1) Identification of sources of funds available under all state and federal programs which may provide education and related services to handicapped children and for which local educational agencies and responsible local agencies are eligible.

(2) Identification of all statutes and regulations applicable to programs for handicapped children under the jurisdictions of the Departments of Education, Health Services, Mental Health, Developmental Services, Social Services, Rehabilitation, Employment Development, and the State Council on Developmental Disabilities which may be waived for participating agencies pursuant to subdivisions (d), (e), and (f) of Section 56202.

56206. Within 45 days of the effective date of this article, the Departments of Education, Health Services, Mental Health, Developmental Services, Social Services, Rehabilitation, and Employmewnt Development, and the State Council on Developmental Disabilities shall, in conformance with procedures established by the Office of Planning and Research, submit a plan to the

Legislature for implementation of the demonstration program, including, but not limited to the following:

(a) A list of provisions of state law recommended to be waived for participating agencies in order that local educational agencies and responsible local agencies may maximize available federal funds to provide education and related services to handicapped children without decreasing funds available to other state and local agencies.

(b) A list of provisions of federal law, federal regulations, or both, for which it is recommended that the state seek waiver, and plans for seeking such waivers.

QUESTIONS FOR SUPERINTENDENT RILES FROM SENATOR RANDOLPH

1. How would you compare your state's secondary school free appropriate public education to that available for elementary school students?

Answer:

As is true nationally, California's elementary schools tend to have the stronger programs across the board for a variety of reasons which include: (1) mandatory school attendance laws, (2) more easily definable and agreed upon goals at the elementary level, (3) less peer group influence.

In California we have taken several steps to strengthen our secondary programs with regard to all students. Our School Improvement Program is designed to establish programs which are relevant and responsive to local community needs and priorities, with a focus on the student in the planning of such programs. Other efforts such as competency testing and the establishment of local proficiency standards for graduation are also aimed at the improvement of secondary programs in general and with regard to handicapped children.

Though our secondary programs for the handicapped provide the full range of services required for a free and appropriate education, we find, through monitoring and evaluation, that as with our regular programs, secondary programs for the handicapped are not as strong as the elementary programs. This is particularly true for the programs for mildly handicapped. It is not as true for our special classes and center programs which typically continue to be as strong through the secondary level.

One example of the greater difficulty in providing a quality special education program at the secondary level may be seen in our resource specialist program which was designed to facilitate mainstreaming of handicapped pupils. This program is much more effective at the elementary school where the child attends one home room and where the child's goals are clearly "reading, writing, and arithmetic." At the secondary level coordinating a child's individualized education program with several teachers and counselors on subjects is difficult at best.

We intend to continue and strengthen our efforts to improve the delivery of special education services at the secondary level. Our Annual Plan calls for the development of a training program that will provide training for secondary educators in (1) identifying the skills related to employment opportunities for the handicapped individuals within their communities; (2) translating information into secondary curriculum for developing individualized education programs in the area of vocational and career education; and (3) meeting the needs of those inadequately served at the secondary level (funded by VI-D).

2. What are your high school programs preparing handicapped young adults to do in the future? Go to work? Go to a sheltered workshop? Go to college or obtain other education?

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QUESTIONS FOR SUPERINTENDENT RILES FROM SENATOR RANDOLPH

Answer:

Depending on the unique needs and abilities of the handicapped student, we would attempt to prepare him or her for any of the above alternatives. Our emphasis is upon working with students and parents to develop an individualized education plan for each student which will be designed to assist him or her in reaching the necessary obtainable and desired goals agreed to by all parties.

Clearly, however, for all students we need increased emphasis at the secondary level on independent living skills including career and vocational education.

3. What percentage of your 94-142 dollars flow through directly to your LEAs?

Answer:

In FY 1980 approximately 79% of the $70.6 million go directly to local education agencies.

4. How does the State Department of Education spend 94-142 funds that are retained in the State Education Agency?

Answer:

The State Department of Education, in FY 1980, will expend approximately $2,232,430 for state administration purposes as provided under PL 94-142. The expenditures generally include:

1.	Salaries, benefits, and related personnel costs for 22 professional and 14 support positions	$ 1,407,777
2.	Travel	135,580
3.	Outside Consultant Services (i.e., for fair hearing officers, monitor and review, etc.)	540,160
4.	Operating Expenses	148,913
	Total Expenditures . .	$ 2,232,430*

*It should be noted that $1,000,000 of the above expenditures are from FY 1979 administrative carryover funds.

5. Information compiled by the Library of Congress indicates that as of September 30, 1979, the State of California had not spent $3,084,418 of its advance funded FY 1978 funds. Please provide information regarding what proportion of this amount has been spent and information regarding timely expenditure of any remaining unspent advance federal FY 1978 funds.

Answer:

The final Financial Status Report (Form 9039-1) for the subject grant was filed with the BEH on February 15, 1980. As of September 30, 1979, the entire $23,333,515 had been expended.

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QUESTIONS FOR SUPERINTENDENT RILES FROM SENATOR RANDOLPH

6. Please provide information regarding the State of California's expenditure of advance funded FY 1979 funds. What proportion of those funds have been spent? What are California's plans for timely expenditure of any unspent FY 1979 advance funded funds?

Answer:

As of March 1980, all funding available to California under the FY 1979 PL 94-142 grant have been committed to local education agencies. The actual flow of FY 1979 funds carried over into FY 1980 is complete except for approximately 5 percent of the local educational agencies which have yet to submit FY 1979 financial reports. We anticipate all 1979 funds to be expended by September 30, 1980.

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QUESTIONS FOR SUPERINTENDENT RILES FROM SENATOR STAFFORD

1. Dr. Riles, we understand that the Bureau of Education for the Handicapped's position is that California has done a good overall job with educating handicapped children, but that the process involving the provision of physical and occupational therapy had some problems. Isn't that true?

Answer: Yes

The difficulty as discussed briefly in my previous response to Senator Cranston's question involving the same issue, is that (1) the authority of the state education agency to direct and supervise related services provided by other state agencies is limited by state and federal statutes and regulations; (2) the definition of related services contained in PL 94-142 is not precise; and (3) funding responsibilities for the provision of related services, in the end, clearly lie with the local educational agency after all other funding possibilities are exhausted; the responsibility of other agencies to maintain their effort in this area is not clearly delineated.

Over the past year, we have conducted a series of negotiations with the state agency charged by state statute with responsibilities for the provision of occupational therapy/physical therapy. During July 1980, the issue of the provision of occupational therapy/physical therapy as an educationally related service was raised by BEH as a concern. Through written correspondence, BEH was assured that whenever occupational therapy/physical therapy was determined to be a related service that the service would be provided under the supervision of the educational agency, at no cost to the parent, and in accordance with PL 94-142.

Throughout the discussions with BEH on this subject, SDE met with the California Childrens Service (CCS) regarding their provision of occupational therapy/physical therapy to school-age handicapped children. Initially, it was agreed that CCS would not provide occupational therapy/physical therapy determined to be a related service. However, this position was later changed. Currently, CCS will provide occupational therapy/physical therapy to school-age handicapped children determined to be eligible for such services in accordance with a medical prescription. In addition, where such services are determined to be related services, that is, required for the child to benefit from Special Education, then it will be provided by CCS in accordance with the requirements in federal and state laws and regulations.

The complexity of the issue of the provision of services such as occupational therapy/physical therapy that are medical in nature raised significant issues heretofore not addressed by either BEH or SDE. The resolution of this issue, which involved another state agency, required significant revisions in a system established long before the enactment of PL 94-142.

2. Isn't it true that the California Department of Education and the California Children's Service have, in fact, agreed to new procedures to avoid some of these problems?

Answer: Yes--See response to Senator Stafford's first question.

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QUESTIONS FOR SUPERINTENDENT RILES FROM SENATOR STAFFORD

1. I understand the Bureau of Education of the Handicapped turned over to you a list of some sixty families who had contracted them expressing the belief they were not receiving the services to which they were entitled. Some of these complaints were unresolved since May 1979, although your department agreed to resolve them, finally, in 30 days after the plan was approved. Why were they unresolved for so many months?

Answer:

When we met with BEH staff in January, we were informed that the reason our plan could not be approved was that there were many outstanding complaints unresolved since May 1979, and until the outstanding complaints were resolved, the plan could not be approved. Upon our request, BEH provided us in mid-February a list of 68 complaints they believed were unresolved. We agreed in writing to BEH to the following:

> Every complaint the State Department of Education has received regarding non-compliance with federal or state law or regulation has been or is being resolved in accordance with Title 5, California Administrative Code regulations. However, to confirm and ensure the timely resolution of all incidences of non-compliance, the Department will immediately review the status of all complaints regarding the provision of occupational or physical therapy which were filed with the State Superintendent of Public Instruction subsequent to May 23, 1979 or which are reflected in the Bureau of Education for the Handicapped records as unresolved. Any outstanding complaints will be resolved in a manner appropriate to the nature of the allegation which constitutes the complaint. Documentation verifying the status of resolution of all outstanding complaints regarding occupational or physical therapy will be received by your office prior to March 31, 1980.

We also verbally agreed (since BEH had difficulty in providing us with a definite list of outstanding complaints) that if we could not locate the complaint due to the incomplete information we received from BEH, we would treat the issue as a "systemic" problem and generally investigate the relevant local education agency's policies and procedures. In addition, for each individual PT/OT complaint, we are investigating local policies and procedures to determine if the complaint represents a "systemic" problem.

Not all of the 68 complaints had been extant since May 1979. Those which were had been unresolved because of the continuing dispute among BEH, ourselves, and the California Children's Service as to the provision of OT/PT--a dispute which was not resolved fully until January 1980.

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QUESTIONS FOR SUPERINTENDENT RILES FROM SENATOR STAFFORD

4. It is true that the complaint procedure that the Bureau of Education for the Handicapped objected to could have taken so long as sixteen or seventeen weeks--not in every case--but as a maximum?

One week for State handling
Six weeks for local decision
One week to appeal back to State
Six weeks for State decision
Fifteen days for appeal
Three more weeks for final decision

Is it true that the procedure finally approved by the Bureau of Education for the Handicapped reduces this to sixty days?

Answer:

Outlined below are the exact time lines of the three state regulations on complaint procedures issued between May 1979 and February 1980 revised time lines with BEH's request for changes outlined before each change.

It is important to note that the May 23, 1979 time line went through extensive public review, for two years, while we worked with the State Board, Commission on Special Education, and field and public to revise our regulations. These regulations were formally approved by the State Board of Education in December 1979, and became effective May 23, 1979.

It is also important to note that the final changes required by BEH in February, 1980 caused the Department to present the State Board of Education with a "fait accompli"--in effect, BEH told the State Board they had no say in this matter. I consider this process to be unsatisfactory and an infringement upon the State Board's authority to set policy for education in California.

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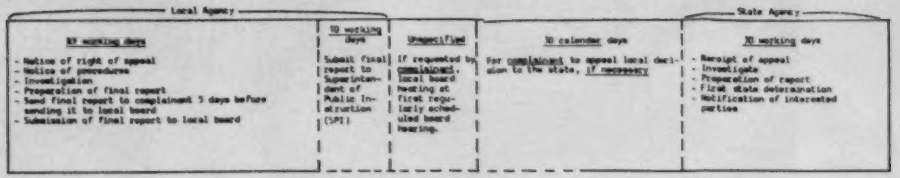
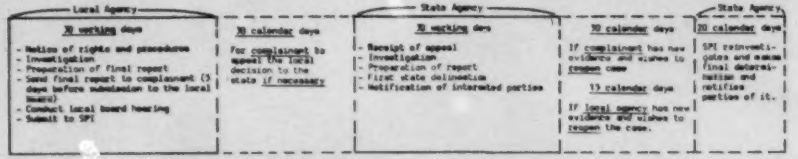
May 23, 1979 Regulation


Local Agency
State Agency
Complaint filed locally (If submitted directly to the State, sent to local agency for resolution.)
45 working days
- Notice of right of appeal
- Notice of procedures
- Investigation
- Preparation of final report
- Send final report to complainant 5 days before sending it to local board
- Submission of final report to local board
10 working days
Submit final report to Superintendent of Public Instruction (SPI)
Unspecified
If requested by complainant, local board hearing at first regularly scheduled board hearing.
30 calendar days
For complainant to appeal local decision to the state, if necessary
30 working days
- Receipt of appeal
- Investigate
- Preparation of report
- First state determination
- Notification of interested parties

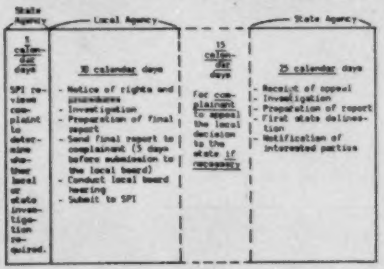
In July and August of 1979, BEH notified SDE of concern that all complaints were referred to the LEA for resolution instead of direct intervention concerning some issues or circumstances. Additionally, BEH expressed a general concern about the length of time lines.

January 17, 1980 Regulation


Local Agency
State Agency
State Agency
Complaint filed at state level. File opened, under three specific conditions state intervenes directly; under other conditions, state sends complaint to local agency and maintains file and "starts the clock"
30 working days
- Notice of rights and procedures
- Investigation
- Preparation of final report
- Send final report to complainant (5 days before submission to the local board)
- Conduct local board hearing
- Submit to SPI
30 calendar days
For complainant to appeal the local decision to the state if necessary
30 working days
- Receipt of appeal
- Investigation
- Preparation of report
- First state delineation
- Notification of interested parties
30 calendar days
If complainant has new evidence and wishes to reopen case
15 calendar days
If local agency has new evidence and wishes to reopen the case.
20 calendar days
SPI reinvestigates and makes final determination and notifies parties of it.

BEH notified SDE in January that the revised regulation was not effective and that 60 calendar days complaint resolution time line would be required by the EDGAR regulations. Further, BEH insisted state had to have the option to intervene in broader instances than the three conditions as outlined in the regulation.

February 15, 1980 Regulation


State Agency
Local Agency
State Agency
Complaint filed at the state level. File opened, under four specific conditions state directly intervenes, under other conditions, state sends complaint to local agency and "starts the clock"
1 calendar day
SPI reviews complaint to determine whether local or state investigation required.
30 calendar days
- Notice of rights and procedures
- Investigation
- Preparation of final report
- Send final report to complainant (5 days before submission to the local board)
- Conduct local board hearing
- Submit to SPI
15 calendar days
For complainant to appeal the local decision to the state if necessary
25 calendar days
- Receipt of appeal
- Investigation
- Preparation of report
- First state delineation
- Notification of interested parties

Senator RANDOLPH. Hopefully, the ranking minority member of our subcommittee, Senator Stafford of Vermont, will be here; I know he plans on it.

Thank you again for being here and introducing those who have testified. I am going to see if anyone else wants to say anything. There are four individuals at that table.

Would you give your name and position?

Dr. LEAVENWORTH. Dr. Leavenworth, and I am vice president of the California board. I thought one other aspect of the problem in California would be of interest to you, because I feel it shortcircuited the public in the process.

It has been 11 months that we have been in this process of getting plan approval, and during that, there have been two occasions when the State board had to take emergency action, change the plan to fit the requirement of BEH. We did this last month, and now this next month in March, we will have the public hearings. So it is one cause which makes the public a little dubious as to whether or not they were really involved, since last month we took the action, and now this coming month, we will have public hearings. We still could make changes, but it has shortcircuited the public's involvement in program planning and regulations by the board.

Senator RANDOLPH. Thank you very much, Dr. Leavenworth.

Are you elected to this office?

Dr. LEAVENWORTH. No. We are appointed in California to the State board by the Governor.

Senator RANDOLPH. I see. For what term of office?

Dr. LEAVENWORTH. It is a 4-year term.

Senator RANDOLPH. All for 4, or do they overlap?

Dr. LEAVENWORTH. Overlap.

Senator RANDOLPH. Ms. ImObersteg, from the office of general counsel, do you have some comment to make?

Ms. IMOBERSTEG. I would only want to reemphasize what Superintendent Riles has said in terms of plan approval process. I have had, perhaps, the dubious privilege of being present through the 11 months of negotiation with the Bureau of Education for the Handicapped in the area of approval for our annual program plan.

The area I would like to emphasize is with the example of the complaint process. We do want consistent standards; we do want clarification of standards. We do, however, want to insure that they are in accordance with the intent of Congress in enacting Public Law 94-142. When we talk about consistent standards—the complaint process—as indicated by Superintendent Riles, the Bureau of Education for the Handicapped indicated to us in the final month of negotiations that they had just discerned what an effective process would be across the Nation, 60 calendar days per resolution.

However, we had no evidence that the same standard had been applied across the Nation and indeed, it had not been brought up in the initial interpretation of an effective procedure.

So I would just like to use that as an example and reemphasize that we do indeed need consistent standards in accordance with the intent of Congress and indeed, a consistent application of those standards.

Senator RANDOLPH. Gail, will you give your correct title?

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Ms. IMOBERSTEG. Gail ImObersteg, staff counsel for the Department of Education in the area of special education.

Senator RANDOLPH. Thank you very much.

Now, Charles Cooke is present. Charles, if you will identify yourself, the position you now hold, and tell us what you did before.

Mr. COOKE. My name is Charles Cooke. I am the Federal program coordinator for the State department of education. One of my previous existences was here in Washington as a Deputy Assistant Secretary of HEW for education legislation, as well as education planning and evaluation.

So the Federal scene is not unfamiliar to me. I guess the only addition I would make is one explanation—again within the complaint resolution process—is that there was an interpretation of the regulations by the Bureau of Education of the Handicapped that a two-stage or two-level complaint process was not acceptable, and the importance of that gets to the point of standards and criteria and whether you can have uniform standards and criteria across States.

BEH, I think, would like us to have State agencies resolve all complaints and investigate them and indeed, do the major review of all of them. In a State the size of California, this becomes a logistics and personnel problem of unbelievable magnitude. It seems to me that, indeed, it is possible to have a single-stage process. But a State the size of California, with 1,043 school districts, running in size from Los Angeles County, Los Angeles Unified—which has to be one of the largest school districts in the country—to Yolo County, makes for quite a difference in the process that can be conducted.

It is those kinds of standards and criteria I think we are concerned about, so that you have flexibility to deal with differences in size and magnitude, and at the same time, you know what hurdles you have to jump over in order to have a complaint procedure which will be approved by the Bureau.

Senator RANDOLPH. Thank you for that comment from a nonbureaucrat who was once a member of the bureaucracy.

I address this question to you very carefully, superintendent Riles. You spoke not once but three or four times and used the word, "adversary." I think this is well-taken, this emphasis. If I have learned something during service in the Congress, it is that to polarize your thinking on subject matters such as this, will prevent your being in that state of thinking by which you can accommodate the viewpoints of others and come to a consensus.

I know that when I was a boy, my grandfather said to me, "Be very careful as you speak, as you act, because remember, there are always two points of view." It was natural that in a less-encumbered society, it could be said, two points of view. But now, I cannot say to my grandchildren that they must be very careful because there are two points of view; I have to be realistic and say there are as many points of view as there are parties at issue and questions to be discussed.

So here, although it is not clearly one point and another point, it is clearly a blending of the authorities, the application of the law. I am discouraged somewhat by the length of time, apparently, which

has been necessary to bring you to this point, which is as yet unresolved, is that correct?

Mr. RILES. Is it finally resolved?

Ms. IMOBERSTEG. The plan has been formally approved, yes.

Senator RANDOLPH. When was it approved?

Mr. COOKE. I believe it was February 5.

Senator RANDOLPH. And when did the controversy begin?

Mr. COOKE. We submitted our plan in March of 1979—the draft plan.

Senator RANDOLPH. Well, I think that approximately 11 months is too long a time for the disposition of this matter to go unresolved. I do realize that time is involved, and various interests must be heard, but I would hope that the situation as it has affected California in moving forward in this important educational process would not be repeated too often.

Mr. RILES. Senator, may I point out that if the plan had been disapproved promptly, then the Congress had provided a due process in the regulation, and we could have gone through a hearing procedure. But when you do not approve the plan, nor disapprove it, then you are being hijacked, and that is what I really could not understand. If there were differences that could not be resolved, then it seemed to me we would have gotten a prompt statement that, "Well, your plan is not approvable, and we are going to disapprove it." Then we could have gotten some resolution, but we could not do that, and it just dragged on and on and on.

Senator RANDOLPH. There is one other question, a very quick question. You said that you believed that—well, let us say the Congress, or the State of California, although you did not state so—when you authorize a measure you then believe that the appropriation should follow in the same amount that is indicated by the authorizing committee. That will not happen very often. You can understand that.

Your testimony has been very helpful, and as we, the subcommittee, are intensely interested in seeing the application of the law throughout all the States take effect, so that these handicapped children may receive an appropriate education. You have very well underscored that this morning.

Thank you very much and to your associates, thank you.

Mr. RILES. Thank you so much, Senator. I would only add in passing that our association—that is, all State superintendents and the trust territories—have been invited to meet in November in your great State of West Virginia, and we are looking forward to that.

Senator RANDOLPH. Where are you meeting in West Virginia?

Mr. RILES. It is kind of an—I should not say an obscure place—but it is not easy to get to. I am sorry, I am embarrassed. But there is only one service that goes in there, and we were advised by the superintendent there to use that plane and not try to drive in there, because the roads are a little twisty. That is about all that we know at the moment, but I would be glad to let you know the location.

Senator RANDOLPH. Thank you very much.

Dr. Schmidt and Dr. Hall, please.

I want the record to reflect that in the instance of Dr. Hall, that Senator Thomas Eagleton of Missouri, who is a member of our subcommittee, had indicated that were he not chairing the Subcommittee on Appropriations this morning, he would have been present.

Dr. Schmidt?

STATEMENT OF DR. THOMAS C. SCHMIDT, COMMISSIONER OF EDUCATION, STATE OF RHODE ISLAND, CHAIRPERSON OF THE COMMITTEE ON LEGISLATION, CHIEF STATE SCHOOL OFFICERS; DR. LEONARD HALL, ASSISTANT COMMISSIONER, MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION, PRESIDENT AND CHAIRMAN OF LEGISLATIVE COMMITTEE, NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION

Dr. SCHMIDT. Mr. Chairman, I am Thomas C. Schmidt, commissioner of education for the State of Rhode Island and chairman of the Committee on Legislation of the Council of Chief State School Officers, which is an independent organization of the commissioners and superintendents of education in the 50 States and the 6 extra-State jurisdictions.

Accompanying me in this joint testimony is Dr. Leonard Hall, who is assistant commissioner of the Missouri Department of Elementary and Secondary Education. Dr. Hall is also president of the National Association of State Directors of Special Education.

Mr. Chairman, would it be useful if I put aside my printed text and simply summarized it for the record?

Senator RANDOLPH. That would be helpful, and your written statement will be made a part of the record in its entirety.

Thank you.

Dr. SCHMIDT. Mr. Chairman, if I may be a little more informal, this is a good law, and it has made great strides in the Nation. Its implementation finally is beginning to work around the several States.

Speaking for Rhode Island, I can say that this law has brought us to a point where equal educational opportunity is happening at last for handicapped children. Rhode Island has not been shy about implementation of handicapped legislation, in its own State and with its own dollars. But this law has made a tremendous difference in providing real equal educational opportunity for these children.

Senator RANDOLPH. Leaving the national picture, how many in Rhode Island would benefit or are benefitting from such a——

Dr. SCHMIDT. About 15,000 schoolchildren.

Senator RANDOLPH. Thank you.

Dr. SCHMIDT. One of the significant differences this law has made has been the individualized educational program. Quite frankly, I have been concerned for a long time about the tyranny of specialization as it has affected children. The IEP has enabled us to bring together people who are from very different backgrounds and professional specialties, to work together for that child. That never happened before, and that has been a marvelous breakthrough. Parent involvement has increased as well. This law has made the parent a full partner in the educational process, something which I

think is essential for the educational process for all children and something which we are now seeing happening for these exceptional and important children in our society.

The problems that we have, sir, are problems simply of administration. Some of them, Dr. Riles has touched upon. One of them is that all States, even a small State such as mine, have the problem of coordination and working with other State agencies. There are a plethora of State laws and State regulations. We have a responsibility under 94-142 to be the lead agency in coordinating and supervising the provision of educational services to handicapped children. It is very hard however to bring your brethren along in that kind of process when they are funded from different sources and when they all have different mandates and supervisors and accountants. It has taken literally years of conversation to bring us, in our State, to a point of intensive cooperation. There is a great deal more work that needs to be done, however.

In my printed testimony, I talk at some length about some of the problems of interagency coordination. One example which I cite concerns vocational rehabilitation programs. There has been a real problem where related services that used to be provided by vocational rehabilitation now must be provided by the educational sector. And as Dr. Riles testified, then you find dollars whistling away from the education of children and going into the related and support services of children.

The central question, I think, that the chief State school officers would ask is, did Congress intend local school districts and State education agencies to be the agencies in our society solely responsible for the total fiscal subsidy and case management of all handicapped children? That becomes a very critical question for all of us as we try to administer this law at a level of the chief State school officer in the State, balance all of the demands for the many different programs, and also try to integrate the many different Federal programs and Federal emphases. It is a balancing act, and one where our primary focus has to be on getting those services to those children. Then, the question of whether they are related or not and how they build into the educational program becomes just a mind-boggling process for each one of us.

Senator RANDOLPH. Did you agree with the thrust of the testimony of Mr. Riles?

Dr. SCHMIDT. I would agree on one issue alone, and that is the issue of related services and coordination and cooperation between the Federal agencies. In Rhode Island we have not had the same problem with BEH that he has had. But there are other States around the Nation that have had those kinds of problems.

Senator RANDOLPH. Thank you very much.

Dr. SCHMIDT. I think, sir, that the only other matter that I would wish to emphasize is the problem of being able to work with different Federal agencies, to look at their regulations, and to make sure that there is a coordinated process.

We hope to have—and by action of the board of directors of the Council of Chief State School Officers yesterday, voted to have—a task force under Dr. Riles' urging, to look at the implementation of Public Law 94-142. This committee will be working in the ensuing

months, and we will provide that information to you so you can get a more precise national picture.

Senator RANDOLPH. It would be helpful if you would keep in very close touch with the Subcommittee with reference to the thrust of the task force program. Would you do that?

Dr. SCHMIDT. We would be delighted to.

Senator RANDOLPH. I step back a moment in connection with the concerns of Superintendent Riles to ask if it would make any difference if, as he stated, there are 340,000 children involved in California and 15,000 involved in Rhode Island. Might that make a difference in his approach and your approach?

Dr. SCHMIDT. My experience would indicate, sir, that it does make a difference. I think Dr. Hall might be able to answer that more specifically from his national viewpoint.

Senator RANDOLPH. Doctor, would you like to do that just now?

Dr. HALL. Yes, sir. I think it is very important for all to be reminded that we have 56 different government jurisdictions, each with unique and separate problems.

It has been the experience of the State directors of special education that BEH has made a legitimate effort to recognize that and to try to take that into consideration to the extent that such flexibility does not jeopardize their enforcement of the Congressional intent of the law and the regulations.

In my own State, I think during the first 2 years of the law we probably had as much difficulty as any State in having a State plan approved because of very clear State laws that differed procedurally from Federal law. The chairman may recall a few years ago, I testified before this committee on that issue. We worked it out. The State did some changing. BEH did some negotiating. And in a spirit of compromise and in a spirit of compliance with all laws, we got our State plan approved, and now feel in retrospect that it could have been a whole lot worse, and we are grateful for the fact that BEH saw that we were a State with a unique problem.

Senator RANDOLPH. Thank you. That is very helpful.

Go ahead, Dr. Schmidt.

Dr. SCHMIDT. Mr. Chairman, the only other point I would make—and I realize it is not under this subcommittee's jurisdiction—is the question of the dollar amount that flows from the Federal Government to the States and local communities for the support of these handicapped children. This is a critical issue, and I know the committee is concerned about it, and I simply want to flag it for the record.

Senator RANDOLPH. I had mentioned earlier that other Senators from the subcommittee would be supplying questions for the witnesses. There will also be, apparently, questions from other members of the Committee on Labor and Human Resources.

Have you concluded, Dr. Schmidt, your presentation?

Dr. SCHMIDT. Yes, Mr. Chairman, only to say thank you for this opportunity and to express our appreciation for the hard work of this subcommittee during the oversight process of this very, very difficult problem. We look forward to working with you cooperatively in the future.

[The prepared statement of Dr. Schmidt follows:]

President
ANNE CAMPBELL
Nebraska Commissioner
of Education

President Elect
ROBERT D. BENTON
Iowa Superintendent
of Public Instruction

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A. CRAIG PHILLIPS
North Carolina Superintendent
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of Education

CAROLYN WARNER
Arizona Superintendent
of Public Instruction

Executive Director
WILLIAM H. PIPER

Statement of

Dr. Thomas C. Schmidt

Commissioner of Education

State of Rhode Island

on behalf of the

Council of Chief State School Officers

and the

National Association of State Directors of Special Education

before the

Subcommittee on the Handicapped

Committee on Labor and Human Resources

United States Senate

March 3, 1980

Regarding Implementation of

P.L. 94-142, The Education for All Handicapped Children Act

COUNCIL OF CHIEF STATE SCHOOL OFFICERS
379 Hall of the States, 400 North Capitol Street, N.W., Washington, D.C. 20001 ● 202-624-7702

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Mr. Chairman, Members of the Subcommittee: I am Thomas C. Schmidt, Commissioner of Education for the State of Rhode Island and Chair of the Committee on Legislation of the Council of Chief State School Officers (CCSSO), an independent organization of the commissioners and superintendents of education in the fifty states and six extra-state jurisdictions. Accompanying me in this joint testimony is Dr. Leonard Hall, Assistant Commissioner of the Missouri Department of Elementary and Secondary Education. Dr. Hall is President of the National Association of State Directors of Special Education (NASDSE). Each chief state school officer is responsible for the administration of education programs serving the needs of all children and youth in his or her state. Members of NASDSE are charged, within each state education agency, with specific responsibility for children who require special education and related services, those children for whom P. L. 94-142 was designed to serve. The Council is pleased that NASDSE is joining with us in presenting these comments. Our joint testimony reflects the concerns of those state education officials who have both overall and specific responsibility for delivering educational services to handicapped children and youth. Our statement also reflects our belief that special education is an integral part of our commitment to appropriately educate all of our nation's children and youth.

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The issues discussed in our testimony are drawn in part from the results of a survey of state directors of special education. Other issues surfaced at a recent meeting of representatives of nine state education agencies with concerns about the implementation of P. L. 94-142. The major purpose for the meeting was to determine the existence and nature of any difficulties with the law and to develop a strategy to examine them further and make specific recommendations.

At the outset, the members of our two organizations agreed that the major problems centered around implementation and not the law itself. The support for Public Law 94-142 is unanimous. The Education for all Handicapped Children Act is viewed as the cornerstone of a commitment to guaranteeing the rights of handicapped children throughout the nation. This commitment is expressed by the fact that many states had passed state legislation similar to P. L. 94-142 even prior to the drafting of the federal law.

State education officials agree that P. L. 94-142 has resulted in a real commitment at all levels to assure every handicapped child access to meaningful learning opportunities. The commitment of our schools to serving handicapped children is increasing and more handicapped children and youth are enrolled in special education programs than ever before: from 3.4 million students in 1976 to a projected child count of 3.8 million in 1979-80.

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The Individualized Educational Program (IEP) for children receiving special education services has been a major success. The Congress, in including the concept of individualized education as a requirement of the law, has assured quality as well as access, and has sparked a revolution in public education. The value of the IEP is obvious: it can cut across organizational lines to allow all of those involved in serving the child to focus on that child's needs.

Under P. L. 94-142, parents are experiencing an increased role as participants in decisions affecting the education of their children. The 1979 case study of the implementation of P. L. 94-142 conducted by Education Turnkey Systems states, "Without question, . . ., the opportunities for parents, who wish to be more involved in special education, have increased significantly due largely to P. L. 94-142."[1]

Mr. Chairman, public education has responded positively to the law. Administrators at both the state and local levels are working to make compliance with P. L. 94-142 a measure of quality, not merely the implementation of regulations by filling out a packet of forms. Teachers are teaching, children are learning and parents are involved and working together with teachers and school officials to improve educational

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decision-making for handicapped children. Despite these successes, several issues remain which must be resolved before maximum implementation of the law can be achieved. What is being sought by the various states are not necessarily changes to P. L. 94-142; rather, we seek the creation of a balanced partnership between the federal government and the states in the interpretation and procedures for the implementation of P. L. 94-142. A balanced federal/state relationship is paramount to the successful implementation of P. L. 94-142. If the states are to do their job of ensuring a free and appropriate education for all handicapped children, the federal government must be consistent across all states regarding interpretation of the law and in providing leadership and assistance.

Inter-agency Coordination

One of the major problems for states is the P. L. 94-142 mandate that state education agencies supervise the provision of educational services to handicapped children which are provided by other state agencies. Implementation of this requirement has been hindered by differing state governance structures, federal regulations which limit and complicate inter-agency action, and the wide range of services for which these other agencies are responsible. Most state governance structures do not provide education agencies with authority over other state agencies serving handicapped children. Great strides have been made in

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coordinating the delivery of services needed for appropriate educational programming through the development of inter-agency agreements. The mandates of P. L. 94-142, however, have resulted in state education agencies assuming the responsibility for services previously provided by other agencies when difficulties arise in inter-agency cooperation.

Let me illustrate this problem with an example as it pertains to related services. For many years, special education and vocational rehabilitation programs have sponsored a joint work/study program. Historically, it has been an excellent example of inter-agency cooperation. The total educational and treatment program for exceptional students was supplemented with vocational rehabilitation dollars which purchased psychological and counseling services, medical diagnostic services and treatment, physical and occupational therapy, prosthetics and transportation to student job sites. However, because of a change in federal auditing procedures, in many states,vocational rehabilitation agencies have withdrawn from this program. Education agencies have had to assume the costs for these services, most often without commensurate budget increases. In Texas, where 10,800 handicapped students participate in work/study programs, over 2 million educational dollars are being spent to pay for job site travel alone, a cost previously borne by the rehabilitation agencies.

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Related Services

Clearly, one of the most difficult issues of all, is that of related services and the ultimate responsibility for their provision. The all-encompassing definition of related services in the legislation has led to regulatory interpretation which places an unrealistic and impractical burden on state and local education agencies. Therefore, the question must be asked: "Did Congress intend local school districts and state education agencies to be the agencies in our society solely responsible for the total fiscal subsidy and case management of all handicapped children?" Services, such as family counseling, physical and occupational therapy, orientation mobility training and psychological services, are generally being purchased from mental health centers, hospitals and rehabilitation centers, and from private sources with education dollars. In the typical midwestern state of Missouri, it is anticipated that an excess of $300,000 will be spent this year on physical therapy and occupational therapy alone. In Alaska, state and local education agencies will expend $670,000 in this school year in providing related services alone. Purchase of these supportive services in these and all other states means the instructional dollar is being diluted. The requirement in P. L. 94-142 that handicapped children have access to all related and supportive services which may be necessary to respond appropriately and adequately to individual needs, presumes that such services are well defined. They are not.

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State and local education agencies are in need of clarification on the relationship between educational and medical and social services.

For example, physical and occupational therapy are, in the largest number of cases, medical activities delivered in accordance with a doctor's prescription. Yet, the regulations would have a team of educators determine a need, would have a medical practice incorporated into individualized educational programs (with measurable objectives), and would have the level and intensity of this service subject to an educational fair hearing process. The problem of finding a physician who will agree that the objectives for his prescription be developed by non-medical personnel and further agree that his prescription be subjected to a non-medical review is an imposing barrier to educational agencies meeting this demand. In some states, this situation is compounded by the difficulty in finding a physical therapist who will willingly violate that state's Medical Practices Act and provide services without a medical prescription.

It needs to be recognized that in many cases, other agencies which are charged with providing related services are governed by federal regulations which interfere with their ability to comply with individualized educational programs developed by an educational agency. This, in turn, places the burden back on the educational agency which often has neither the staff nor the resources to meet these demands.

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Purchase of these supportive services by education agencies means fewer dollars are available for instructional purposes. We urge, therefore, that the relationship among instructional services, social services and medical services and the responsibility of state education agencies to guarantee them be clarified.

Interpretation of Federal Mandates

A third and related issue reported by states is inconsistant interpretations by the Bureau of the Handicapped and the Office of Civil Rights of federal mandates under Section 504 of the Rehabilitation Act of 1973 and P. L. 94-142. Unless state and local education agencies can be assured of a clear and consistent interpretation of their responsibilities by these two agencies, they will remain in various stages of confusion and we will fall short of our shared goals.

For example, OCR, BEH, and the courts, have provided different and conflicting answers regarding whether services such as psychotherapy and catheterization are required related services under P. L. 94-142 and Section 504. These differences are causing a great deal of confusion nationally. Consistency among the definitions and standards of the various federal regulatory agencies which monitor and enforce the requirements of P. L. 94-142 and Section 504 is required.

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A national process must by developed to establish coordinated standards and criteria for policies and procedures required under P. L. 94-142 and Section 504 which will be applied equally to all states, but which allow for unique state situations. Areas requiring such standards include related services, complaint procedures and the IEP process. We recommend that SEAs and LEAs be involved in the development of these standards.

Funding

The last issue which must be addressed, although it is referehced earlier in this paper, is the lack of adequate funding for P. L. 94-142 programs. We realize that the Senate Subcommittee on the Handicapped does not appropriate funds. As members of the committee which authorized this law, however, we know that you share our commitment to providing quality educational services to handicapped children. We urge you, as Members of the Congress, to advocate adequate funding for this program in the future. There is no question that programs authorized under P. L. 94-142 are underfunded. Local and state governments have contributed susbtantially to increasing the financing these programs. Federal support, while considerable, is still not adequate nor does it appropriate the level which was authorized. To illustrate, the average annual increase in state funding for special education among all states between FY75 and FY79 was 14.3 percent, according to an August 1979 paper issued by the

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Department of Health, Education and Welfare. Federal dollars, as a percentage of total state and federal special education funds, averaged 4.6 percent in FY75, 6.2 percent in FY77, and 4.9 percent in FY78.[2] It is critical that the federal appropriation for FY81 reflect a substantial increase in federal support.

In summary, the impact of P. L. 94-142 on this nation's public education system is unprecedented. The expectations set forth in the law can be achieved. Critical issues remain which will require our collective energy and attention. If these issues are resolved, and if the financial commitments are met, full implementation can be achieved.

Thank you for this opportunity to express our views and share our concerns. We stand ready to assist you in every way to achieve our common goals.

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[1] "Case Study of the Implementation of P.L. 94-142," Education Turnkey Systems, 1979, p. 20.

[2] Technical Paper #6, "State Financing of Special Education," August 30, 1979, Office of the Assistant Secretary for Planning and Evaluation, Department of Health, Education and Welfare.

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Senator RANDOLPH. We appreciate your working with us, because we need that help; we need it very much on a continuing basis.

Dr. Hall, would you make your statement, sir?

Dr. HALL. Mr. Chairman, I would like to take the opportunity and am grateful for the opportunity to just reinforce a couple of points that Dr. Schmidt offered and that were offered by Dr. Riles.

First, I think it is more significant that the State directors of special education and chief State school officers are testifying jointly than just the fact that it is the boss and the program person who works for the boss.

You gave to us a tremendous responsibility in 94-142, and a tremendous opportunity. We are grateful for both. We are grateful for the chance to be of service and for the fact that Congress recognized that the public education delivery agent as exemplified by the chief State school officer, and those of us in his or her employ, are equal to the task and can do the job.

We would hope that you would be intolerant of any impediments that are put in the way administratively and bureaucratically to letting us do our job of improving the quality of life of this Nation's handicapped children and youth.

Dr. Riles spoke and Dr. Schmidt spoke of some of the conflicting enforcement problems which we are experiencing between BEH, Office for Civil Rights, and others. It is my point of view as a State director who spends almost every waking hour on the issue that it is a critical issue, that at least in the case of Office for Civil Rights, it is a prosecutor-defendant relationship where we spend our time in frivolous investigations, in frivolous litigation, on issues where we defend ourselves as administrators, and the youngster is some abstract third party.

I am pleased that our relationship with BEH is not that, that we do keep the youngster in focus, and that we are looking at ways of jointly implementing the law, not complying with words on paper that are regulations.

It concerns me that we are spending time, energy, and fiscal resources in fighting over the compliance issue. And it boils down to whether or not the States and the school districts are to take congressional direction in implementing 94-142 through the Bureau of Education for the Handicapped, or if we are to react to direction from any enforcement arm that chooses to pursue it; whether it be BEH, OCR, or the courts of competent jurisdiction, it is a concern.

Another concern, Senator, that I would hope the committee would address would be the question of related services. I do not fault BEH for being hesitant to offer dictum on unproven issues. We approached BEH several years ago on the question of catheterization. A petitioner wanted their youngster catheterized as part of the related services of 94-142; was it the intent of Congress to charge catheters as part of special education? The due process was used. The hearing came to my office. I called BEH, and they said, "We do not know. That is a tough one." Our commissioner of education and our attorney developed two opinions, one requiring it and one not, because we were not certain. We chose to let the courts decide that issue and recommended to the school that we would not enforce the issue. The Office for Civil Rights quickly

found us in noncompliance, and 2 weeks ago, the courts found us in compliance.

So again, we do not know, really, what is right or wrong.

Another quick example, if I may. We have had a situation where a parent unilaterally withdrew her deaf youngster from a school for the deaf, brought the child back after a period of several months, and literally left the child at the doorstep of our school. We were grateful to have the child back and immediately put her back into class.

Later, the youngster struck out at a houseparent and was spanked for doing so. We are now being investigated by OCR for——

Senator RANDOLPH. What did the parent do?

Dr. HALL. The child kicked the houseparent in the shins rather hard and was spanked for doing so. A complaint was filed that we discriminated against the handicapped because of our discipline. And we have been told on the phone that we will be found in noncompliance for failure to give the parent due process before placement, and we must show that the behavior which we disciplined is not secondary to the handicapping condition.

Senator RANDOLPH. How do you feel about the spanking response to the kicking in the shins?

Dr. HALL. I feel that the 16-year-old young lady that kicked the houseparents in the shins, if living at home, should have been spanked by her mother, and our houseparents have to act as parent surrogates, and a whack on the seat with the hand, and the child fully clothed, is not abuse in my eyes. We took care of checking out everything that happened. It is unfortunate that this becomes a 94-142 or section 504 compliance issue. It seems inappropriate. It seems inappropriate that OCR can say to a State, "Because we allege that you have denied a child his rights, you shall keep the child in school an extra year to make up for the loss, irrespective of the fact that your State constitution prohibits education after age 21."

So to comply with one law, we are asked to disregard another. And I will not bore you with story after story, because it seems like we play, "Can you top this?" a lot in our discussions around the State.

It is an impediment, Mr. Chairman, that needs to be addressed to assure the spirit of the law is realized.

Senator RANDOLPH. Well, I do not know that it will help you or anyone else, but I am in agreement with you.

Dr. HALL. And is my wife.

The question of IEPs has been an issue. It is the sum and substance of the law, and Congress is to be commended for its wisdom and its courage to say that good education means taking a look at the individual youngster.

You have been criticized for legislating curriculum. I suspect that it is irrelevant at this point in time because so many youngsters are so much better off because we are taking a look at the individual youngster and why the child is at a point in time, not reacting to the fact that he or she is.

The IEP is strong and is good education practice for all children. The teachers, I think, are guilty on the side of overzealousness. So we have in our office a 38-page IEP.

I feel badly about the teacher who had to spend that much time and energy trying to make certain that she was doing what was right for the law and the youngster. We find that teachers are not trying to circumvent the IEP process. If nothing else, they are trying to overkill it in the way they are implementing it.

Two final points, Mr. Chairman. The matter of interagency coordination at the State level, where Congress assumed we had the ability to have jurisdiction over other Government agencies—such is not the case.

An example would be that where a State director of special education advised the Department of Corrections that unless the handicapped children and youth within the penal system were receiving special education in accordance with the law, that agency would be in violation of both 94-142 and section 504, at which time the director of the corrections system said, "What is 504?"

The comprehensive system of personal development component of the law is also a strength. I believe we are making progress, but I would hope that this subcommittee and all who review the law hold the institutions of higher education accountable for both providing sufficient numbers of competent and qualified people to serve our youngsters and not put an overdependence on in-servicing those who discover, after they are in the field, teaching the youngsters, that they are insufficiently trained.

I believe that would conclude some of the reinforcing remarks that I wanted to offer to supplement Dr. Schmidt's testimony representing our joint associations.

Thank you.

[Whereupon, Senator Stafford assumed the Chair.]

Senator STAFFORD. Thank you very much, Dr. Hall. As you can see, the demands on Senators' times are such that one of us has had to go elsewhere. Senator Randolph had another committee to attend to, and I just got through another duty in time to get down here to relieve him. So, for the rest of this hearing, it will be Stafford for Randolph.

We appreciate your testimony very much, and yours, Dr. Schmidt.

I understand that Senator Randolph has indicated that questions will be sent to you in writing, and we request a reasonably prompt response thereto in writing.

[Dr. Schmidt's and Dr. Hall's responses to questions asked by Senator Randolph follow:]

April 3, 1980

The Honorable Jennings Randolph, Chairman
Subcommittee on the Handicapped
4230 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Randolph:

Thank you for the opportunity to present the views of the Council of Chief State School Officers during the March 3, 1980 oversight hearing on the implementation of P. L. 94-142, the Education for all Handicapped Children Act. I hope these answers to your questions are helpful to the members of the Subcommittee on the Handicapped.

1. How would you compare your state's secondary school free appropriate public education to that available for elementary school students?

Rhode Island has had legislation governing the education of the handicapped for twenty-eight years. Regulations to implement the law were first promulgated in 1963 to cover handicapped children from age 3-21, or graduation from high school, whichever comes first. As part of the state law an annual census of handicapped children must be conducted. Over the past fifteen years the information which we have received from local school districts consistently has shown that the major portion of handicapped pupils being provided with special education and related services are those in the 6-17 age group. Of 15,322 total pupils reported as being served on December 1, 1979, 13,679 pupils were in the 6-17 age group. The 18-21 age group totaled 1180 pupils. While the 6-17 group includes pupils who would be considered to be secondary level students, the major concentration of services is on those handicapped children who are enrolled in elementary schools. Our monitoring activities have revealed that most school districts have developed a reasonably complete range of services at the elementary level.

2. What are your high school programs preparing handicapped young adults to do in the future?

This I feel is a question best addressed in the context of the individual. For some students, given their particular needs, interests, strengths, handicapping conditions, etc., the high school program would be preparing them to go to work. For other individuals, based

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on the same considerations, the program would be preparing them for sheltered workshop activities. And yet others would be prepared for further training or education, including enrollment in college level programs.

The important thing is, as I brought out in response to the earlier question, to have a broad range of appropriate programs available to all secondary age handicapped students.

3. What have been the increases in administration/supervisory and in support staff in your special education department since 94-142 was enacted?

Our Special Education Unit was formed in November, 1975 and consisted of a Coordinator and five professional staff members. With the heavy emphasis on monitoring activities, we found that additional staff were needed and therefore increased the staff by two professional staff members in July, 1978. We still feel that yet additional staff are needed in order to respond to requests for assistance from LEA's and other state agencies as well as to keep monitoring activities up to a quality level.

With the economic situation being what it is, it has been difficult to obtain these additional personnel through state resources. It had been anticipated that P. L. 94-142, by this time, would have reached an appropriation level which would make the 5% allowed for administration the greater amount (vs. the $200,000.). Since the appropriation has only reached 12% of the National Average per pupil cost at a time when it should be moving into the 30% year, the $200,000. continues to be the greater amount for Rhode Island and for many of the smaller states. Although smaller in the number of pupils served, Rhode Island fulfills the requirement to monitor programs in a thorough and comprehensive manner as emphasized by the federal government.

With respect to the amount allowable under P. L. 94-142 for administration, I think you would find the following information to be of interest and pertinent. Approximately $2.8 - 3 million dollars is received form the federal government under the Vocational Education program. The federal share of the administrative costs of that program is $460,000. In the current school year Rhode Island is receiving $2,878,000. from P. L. 94-142. The legislation governing the latter program limits the federal share of administration to $200,000.

A summary of the state support of special education since the inception of P. L. 94-142 is offered as an attachment in chart form (see attachment A).

4. Your testimony does not address the implications of Armstrong vs. Kline for your state. Would you comment, please.

Rhode Island law and regulation governing the Education of the Handicapped was amended in 1971 to include additional groups of handicapped children who heretofore had been excluded from participation in educational programs. These groups were the severely/profoundly retarded and those children having multiple handicapping conditions. At the time of the amendments it was decided that the length of the school year should be extended for these pupils to 230 days per year. The rationale for this was that the severity of the handicaps and the multiplicity of problems encountered in these children warranted attention and services of greater intensity and duration. Therefore, those children for whom one could expect to be receiving pressure for extended year programs have already been receiving such a program. We have also received some information to the effect that other pupils who do not fall into the categories mentioned above (severe/profound retardation and multiple handicaps) have been provided with programs which extended beyond the normal school year.

For these reasons the Armstrong vs. Kline has not had the effect which other states may be experiencing.

5. In your testimony you note that there are problems with interagency cooperation and specifically made reference to the fact that vocational rehabilitation has withdrawn its support. You also note that this has occurred because of a change in federal auditing procedures. Could you explain further, please?

The situation briefly described in the joint testimony which I delivered on behalf of the Council of Chief State School Officers and the National Association of State Directors of Special Education represented one example of one factor hindering interagency cooperation. Several factors have contributed to this problem including differing state governance structures, federal regulations, and the range of services for which these other agencies are responsible. We, in Rhode Island, have not encountered this specific problem with vocational rehabilitation service agencies. However, several states have experienced a considerable erosion of their historically good relationship between vocational rehabilitation and special education because of the change in federal regulations.

In 1977 the General Accounting Office (GAO) submitted a report ("Third Party Funding Agreements no longer appropriate for serving the Handicapped through the Vocational Rehabilitation Program," #B164031) based on their audit of the use of third party funding by state vocational rehabilitation programs. GAO cited violations in the use of certified expenditures (one type of third party funding) by a state or local agency covering goods, services, and personnel made available to the vocational rehabilitation agency cooperative programs. It was felt that "the integrity of the state expenditures for vocational rehabilitation" was not being maintained.

In June, 1978, as a response to the GAO audit, Robert Humphreys, Commissioner of Rehabilitation Services, sent a memo (RSA-PI-78-22) to state vocational rehabilitation directors which instructed them to terminate the use of funds which flow under the certified third party programs. Bruce Archambault, Head of the Interagency Relationships Committee, Council of State Administrators of Vocational Rehabilitation (CSAVR), has stated this memo resulted in a National "massive disengagement" in the use of third party funds and cooperative programming.

In December, 1978 a memo (RSA-PI-79-2) was sent by Commissioner Humphreys to state vocational rehabilitation directors informing them of a November, 1978 joint memo from the Commissioners of Education and Rehabilitation Services which encouraged joint efforts to coordinate services to handicapped individuals. Under the June, 1978 proviso, however, third party funding was still to be terminated. State agencies interpreted (perhaps inaccurately) the June, 1978 memorandum and P. L. 94-142 to mean the special education dollars should be used for all programs related to a handicapped individual's education.

OMB informed RSA in a June, 1979 memo (RSA-PI-79-25) that the RSA procedure of limiting the use of third party funds was contrary to the spirit of the Intergovernmental Agency Act (OMB circular A-102). Essentially, state money is state money, whether it is derived from special education or vocational rehabilitation monies.

Because of the OMB directive, an August, 1979 memo (RSA-PI-78-22) was sent by Humphreys to State Rehabilitation Agencies which rescinded the June, 1978 memo to terminate third party funding. Humphreys stated that the vocational rehabilitation regulations would be revised to strengthen the monitoring of cooperative programs.

The Honorable Jennings Randolph, Chairman
Subcommittee on the Handicapped
4230 Dirksen Senate Office Building
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Page 5

According to Archambault even with the joint letter to encourage interagency cooperation and the memo rescinding the policy of terminating funding, cooperative planning in the states between vocational rehabilitation and other agencies (particularly special education) is no where at the level it once was. Some states, such as New Hampshire, have been able to resume the old cooperative relationship. Other states need assistance in accomplishing this, either through policy clarification or a legislative foundation, and through a commitment from the individuals in the concerned agencies.

6. How much of your state's fiscal year 1977 (advance appropriated for FY1978) 94-142 allotment remains unspent? FY1978 (advance appropriated for FY1979)?

Of the $1,046,913. allocated to Rhode Island from P. L. 94-142 in FY1977 (advance appropriated for FY1978), all but $25,361 was expended by the SEA and participating LEA's. Most of the unexpended funds are due to plans which LEA's had developed which were ultimately unfulfilled. Very often this has been due to their having been unable to obtain certain types of personnel to work with the pupils.

The FY1978 allocation (advance appropriated for FY1979) totaled $1,895,366. for Rhode Island. Currently the amount of uncommitted funds is approximately $20,200., most of which is in the process of being applied for by the various local school districts.

Again, I would like to take this opportunity to express our appreciation for your long commitment to quality education for all children and for your efforts toward reaching this goal. If I can be of further assistance, please do not hesitate to call.

Sincerely,

Thomas C. Schmidt

Thomas C. Schmidt
Commissioner of Education
State of Rhode Island

TCS:jlh
Enclosures

Attachment A

SUMMARY OF STATE SUPPORT OF SPECIAL EDUCATION SINCE INCEPTION

OF P.L. 94-142

	PERSONNEL	M.I.S.	STAFF TRAINING	SPECIAL EDUCATION REIMBURSEMENT TO LEAS	TOTAL
1975-1976	$ 21,400.			1,000,000.	1,021,400.
1976-1977	22,500.	7,000.		1,000,000.	1,029,500.
1977-1978	23,700.	7,000.	100,000.	4,000,000.	4,130,700.
1978-1979	78,300.	11,000.	100,000.	13,000,000.	13,189,300.
1979-1980	104,200.	11,000.	100,000.	14,000,000.	14,215,200.
GRAND TOTAL:					$30,586,100.

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Cooperative Programs
Background Information

Cooperative programs continue to be of great importance to RSA, State human service agencies and clients. The 1978 Amendments to the Rehabilitation Act of 1973 will require heightened activity between RSA and other agencies at the Federal level, and between the designated State rehabilitation agencies and other components of State and local government.

When a cooperating agency decides to contribute toward the costs of adding a rehabilitation services component to its existing program, it can choose from among three funding mechanisms:

(1) direct appropriations from the State to the vocational rehabilitation agency for the cooperative programs;

(2) transfer of cash to the vocational rehabilitation agency from the participating agency's appropriation; or,

(3) certification of expenditures (State funds) made by a State or local agency (1361.13 and 1361.80 CFR) covering goods, services, and personnel made available to the vocational rehabilitation agency cooperative programs.

Based on the sections of the Rehabilitation Act cited earlier, Federal regulations (45 CFR 1361.13) and guidelines provide that when State vocational rehabilitation agencies enter into cooperative programs that involve the use of funds from a participating agency, such cooperative programs are to be based on written agreements. These written agreements must describe the activities to be undertaken and the goals to be achieved, and provide for annual budget and expenditure reports. Furthermore, regulations and guidelines require that:

(1) all expenditures for vocational rehabilitation services and their administration are to be under the control and at the discretion of the State rehabilitation agency and used only for handicapped individuals who are applicants or clients of the rehabilitation agency.

(2) the services provided under the agreement must:
   (a) be new services or new patterns of services provided through the cooperating agency; and,

   (b) not be services of the cooperating agency to which the handicapped individual would be entitled if he were not an applicant or client of the State rehabilitation agency.

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Because of Congressional and public concern over alleged abuses in the vocational rehabilitation cooperative programs, GAO audited the program in 1976-77. It found widespread violations in the cooperative programs that utilized certified expenditures as matching from non-vocational rehabilitation agencies (GAO Audit Report #B164031(1)). The review includes the legal, programmatic, and fiscal aspects of the agreements in question. GAO findings included:

-- Cooperative agency services were often services that such agency was required to provide and would continue to provide regardless of the agreement.

-- State vocational rehabilitation agencies are not meeting the programs' matching fund requirements in regard to their cooperative agreement because of (a) changes in State and Federal legislation expanding the responsibilities of cooperative agencies or (b) already mandated cooperative agencies' responsibilities.

-- In some cooperative agreements, Federal rehabilitation expenditures are being improperly used to subsidize the basic program of other State and local agencies.

-- VR personnel assigned to cooperative programs were providing services identical or similar to the basic services provided by the cooperating agencies.

-- Many persons served under cooperative agreements were only marginally handicapped, if handicapped at all.

-- In general, cooperative agreements did not carry out the mandate of the Rehabilitation Act of 1973 relative to the requirement that State agencies give service priority to the most severely disabled. Commitment of resources to cooperative agreements limits the State agencies' ability to direct the program to serve the most severely handicapped.

-- Costs and accomplishments of cooperative programs are often not accurately reported, casting doubt on the validity of the statistics.

-- Staffing, referral, and service delivery patterns in cooperative programs often resulted in the inefficient use of vocational rehabilitation resources.

-- Cooperative agreements reviewed by GAO include the use of Federal and State expenditures which did not comply with Federal regulations and program guidelines.

HEW audits of cooperative programs in six States from July 1969 to December 1974 found problems in the operation of the cooperative funding programs and identified $5.8 million in certified expenditures which did not comply with Federal

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regulations and program requirements.

RSA initiated in July of 1977 its own review of cooperative program agreements operating in States. These reviews further substantiated the findings of GAO and HEW Audits: (1) State agencies were not retaining control over the provision of rehabilitation services to clients, (2) services provided through cooperating agencies were not new services or new patterns of services, and (3) services provided would have been available to clients even if the persons were not applicants or clients of the State rehabilitation agencies.

While problems have been identified in many cooperative programs, regardless of the type of non-Federal expenditures, major problems have existed where the certified expenditures method for matching was utilized.

In recent years, many State VR agencies have replaced certified expenditures of goods, services, and personnel, as a matching method, with direct appropriations or cash transfers to the VR Agency in order to comply with the requirements of the Rehabilitation Act of 1973 pertaining to control over the delivery of VR services in cooperative programs.

State vocational rehabilitation agency reliance on certified expenditures to meet the State's share of funding for cooperative programs has dropped from 41 States in 1976, representing $29,399,503, to 28 States in 1978, representing $17,658,334. This substantial change again indicates serious State VR agency concern about the problem. Reports from State VR agencies in mid-FY 1979, indicate a continued trend toward direct appropriations and cash transfer to effect the continuation and expansion of valuable interagency cooperative VR programs.

On June 29, 1979, the Office of Management rejected the RSA request to deviate from the matching policy in OMB Circular A-102. The primary reason for the rejection of this request to eliminate the use of certified expenditures as State match is that OMB believes such a policy would be contrary to the spirit of the Inter-governmental Cooperation Act. More specifically, OMB believes such a policy would unnecessarily interfere with the rights of States to determine the internal arrangements that are best suited to their programs.

OMB has recommended stronger monitoring of cooperative programs by Federal and State personnel. If tighter monitoring does not eliminate abuses in the use of certified expenditures in certain States, then a requirement that State matching be done on a cash basis will be made on a State-by-State basis.

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF HUMAN DEVELOPMENT SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, D.C. 20201

PROGRAM INSTRUCTION
RSA-PI-78-22
June 5, 1978

TO : STATE REHABILITATION AGENCIES (GENERAL)
STATE REHABILITATION AGENCIES (BLIND)

SUBJECT : Termination of FFP for Third Party Funding Agreements

CONTENT : Federal financial participation will not be available for cooperative programs utilizing third party funds certified as having been expended for vocational rehabilitation activities by a State or local agency under a cooperative program pursuant to 1361.13 of the Federal Regulations.

Effective Date

September 30, 1979

Exception

For those States whose State legislature meets on a biennium and who have reported in FY 1977 (Annual Report for Vocational Rehabilitation - OHDS-RSA-2) that 50 percent or more of the State funds expended in such State are from this source, the effective date will be September 30, 1980.

Policy Rationale

On April 17, 1978 under Information Memorandum 78-49, I transmitted to you the GAO Audit Report "Third Party Funding Agreements no Longer Appropriate for Serving the Handicapped through the Vocational Rehabilitation Program." The deficiencies noted by GAO related to (a) State agencies purchasing educational, health, correctional, and mental health services which were the legal responsibility of the third party; (b) State agencies not retaining control over expenditures of the VR services to institutional clients; and (c) certified and assigned participating third party staff not being under the direct control and supervision of the VR agencies while performing duties.

The deficiencies raised serious questions as to the legality and effectiveness of the Third Party Agreements being administered by most States, and in fact, it was recommended by GAO that the Third Party Agreements be terminated.

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A series of meetings were held with State and Regional Office staff to discuss the findings and the recommendation to discontinue Third Party Agreements, concluding with a meeting I had with the Executive Committee of the Council of State Administrators of Vocational Rehabilitation on March 23, 1978 and further discussions of the issues at the CSAVR Spring meeting on May 1.

At each of the above meetings confusion was evident over the relationship between adverse audit findings and the nature of the non-Federal expenditure in cooperative programs utilizing third party funds. Section 1361.80 of the Federal Regulations describes those expenditures of State and local funds which can earn Federal funds under Section 110 of the Rehabilitation Act of 1973, as amended.

These non-Federal expenditures in cooperative programs utilizing third party funds can be of three types. The first, while technically not from a third party, is direct appropriation of State funds to the vocational rehabilitation agency, earmarked for use with a particular cooperative program. The second is the transfer of cash to the vocational rehabilitation agency by a State or local agency for use in carrying out cooperative programs. The last method is through the certification of expenditures made by the State or local agency under a cooperative program meeting the requirements of 1361.13 of the Federal Regulations.

While problems have been identified in many cooperative programs utilizing third party funds, regardless of the type of non-Federal expenditures, the major problem, which is addressed by this policy issuance, involve certified expenditures. It is my considered opinion that if RSA does not take immediate action on this issue that it will be found seriously derelict in discharging one of its basic Federal responsibilities and that State agencies will find themselves involved in ever increasing difficulty in trying to continue to manage a strong, viable program directed towards serving the needs of the handicapped.

Implementation Action

1. Within 120 days of the issuance of this policy, Sections 1361.13 and 1361.80(b)(1) will be amended removing present FFP authority for goods, services, and personnel made available for vocational rehabilitation purposes by a State or local agency under a third party agreement with the State VR agency.

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2. State agencies are expected to take immediate administrative steps to assure that Third Party Agreements involving the improper use of Federal funds are discontinued and new agreements are not initiated.

3. In accord with the recommendation of the Third Party Agreement Task Force, RSA will work closely with the CSAVR in developing and implementing a formalized system for entering into Cooperative Arrangements with other public agencies involving direct appropriation to the vocational rehabilitation agency or the transfer of funds from another State or local agency. A goal of the Federal and State Task Force will be to formalize State VR agency responsibilities so as to insure that present problems are eliminated and that States will have adequate controls in place to assure maximum accountability of cooperative programs with other State and local agencies.

INQUIRIES TO : Director, Office of Rehabilitation Services

Commissioner of Rehabilitation Services

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MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY

TO : Chief State School Officers
State Directors of Vocational Rehabilitation
State Directors of Vocational Education

DATE: November 21, 1978

FROM : Commissioner of Education
Commissioner of Rehabilitation Services

SUBJECT: Development of Formal Cooperative Agreements Between Special Education, Vocational Rehabilitation, and Vocational Education Programs to Maximize Services to Handicapped Individuals

This memorandum announces a joint national initiative to expand and improve the service delivery system to handicapped individuals among the Rehabilitation Services Administration, U. S. Office of Education (Bureau of Education for the Handicapped and Bureau of Occupational and Adult Education), the National Association of State Directors of Special Education, National Association of State Directors of Vocational and Technical Education, and the Council of State Administrators of Vocational Rehabilitation. It is a basic tenet of the State and Federal participants that the development of new interagency agreements among State Departments of Special Education, State Departments of Vocational Education, and State Rehabilitation agencies is critical to the achievement of the goal. It is the expectation of all of the participants that States will develop new agreements during Fiscal Year 1979.

As further evidence of this joint priority, the Federal agencies herein named have:

Identified staff to assist in the development of these agreements and serve as principal Federal contacts on matters of interpretation and clarification of these initial guidelines;

Established a task force to develop further guidelines for collaborative planning and service delivery; and

Committed staff and resources, to initiate a national training workshop for special educators, vocational educators, and rehabilitation administrators scheduled for February 1-2, 1979.

This memorandum further supplements a joint communication of October 17, 1977 from the Commissioners of Education and Rehabilitation Services, and provides additional clarifying guidance on the cooperative use of programs

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to serve handicapped individuals. Also, it addresses a number of issues and recommendations emanating from a Joint CSAVR-NASDSE Task Force. Further efforts are under way to respond more fully to all of the concerns raised by that Task Force.

To briefly recapitulate relevant information from the joint communication of October 17, the Commissioners identified the purposes of the communication to be:

> To assure that handicapped persons eligible for services under the Education for All Handicapped Children Act of 1975 (P.L. 94-142), the Vocational Education Amendments (P.L. 94-482) and the Rehabilitation Act of 1973 (P.L. 93-112) receive all appropriate services for which they are eligible.
>
> To assure that all agencies administering these laws understand that eligibility under one law should not, in and of itself, result in a denial of complementary services under another of the laws.
>
> To assure that the Federal agencies involved are fully committed to helping State and local agencies to engage in coordinated service delivery for handicapped persons.
>
> Further, without restricting the eligibility of any handicapped person, it is the intent of the Commissioners to encourage their constituent State and local agencies to give priority to identifying severely handicapped persons requiring services and to assuring the prompt and effective delivery of services to all those who qualify for them.

The principal legislative references are:

> Part B of the Education for the Handicapped Act (EHA) as amended by Public Law 94-142 requires that States receiving grant assistance under the Act assure a free appropriate public education for all handicapped children. A free appropriate public education is defined as "special education and related services."
>
> The Rehabilitation Act (P.L. 93-112) authorizes vocational rehabilitation agencies to provide services to handicapped individuals in order that these individuals may "prepare for and engage in gainful employment."

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Under P.L. 94-482, vocational education provides the occupational training and support services needed to enable handicapped persons to prepare for employment. Eligible persons are those who are in high school, those who have completed or left high school and are available for full time study, and those in the labor market who need upgrading or retraining. Support services do not include medical, dental, lodging or food.

Part B, EHA, gives the State the responsibility to assure the provision of a Free Appropriate Public Education. The Statute is not intended to relieve an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a handicapped child.

P.L. 93-112 contains a longstanding "similar benefit" or "first dollar" provision which requires the vocational rehabilitation agency to make full use of existing resources before expenditure of VR funds to pay for certain services. Consequently, without clear-cut guidance, there can easily be some misunderstanding in the case of handicapped individuals who are eligible under more than one program. Therefore, there is an obligation to develop cooperative working arrangements.

P.L. 94-482 requires State Education agencies, under the State Board for Vocational Education to expend 10% of the "Basic Grant" allocations to pay 50% of the costs of providing the special services needed by handicapped students to succeed in regular vocational education programs. Students with disabilities who can succeed without special services are not reported as handicapped under the vocational education reporting system.

The issue of current concern between education and rehabilitation falls in the area of "related services" since the provision of basic academic instruction and vocational education continues to be the responsibility of the education agency. However, "related services" may overlap certain VR services. A number of handicapped individuals under 21 years of age may be eligible for such services under all three programs at the same time.

Although the programmatic goals of each program are different, many of the services which may be offered under one program could, under certain circumstances, be provided by the other. It must be remembered, however, that terms and purposes are not always identical and that there will remain certain differences to be resolved at the local level within each agency's laws, regulations, priorities, and resources. Following are a number of areas which have been identified as needing additional clarification.

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Definition of a "free appropriate public education"

A free appropriate public education is defined as: special education and related services which are provided at public expense, under public supervision and direction, meet the standards of the State education agency, include pre-school, elementary school, or secondary school education in the State involved, and are provided in conformity with an individualized education program (45 CFR 121a.4).

Dissimilarity of the VR program from a "rights program"

There are some fundamental features of the vocational rehabilitation program which must guide VR decisions. Where the education program under P.L. 94-142 is a "basic rights" program, the VR program is not. Federal legislation and implementing regulations establish certain conditions which State VR agencies must meet in order to qualify for Federal Financial Participation (FFP). These conditions are reflected in State plan requirements.

The law, regulations, and State plan recognize that all individuals who conceivably might meet eligibility criteria cannot be served and that limits may be set on who may be served. Consequently, accommodations are permitted where State VR agencies do not have adequate resources to serve all handicapped people who are at or near working age and have vocational potential. Essentially, it is this type of flexibility permitted a State agency which obviously deviates from a "basic rights" program approach. Also, in recognition of limited VR program capacity and to increase that capacity, the law requires the use of other available resources. Additionally, Federal regulations allow State VR agencies the option of applying a means test as a basis for cost sharing for certain services.

Relevant factors governing broad approaches by State VR agencies in the provision of services

Given the flexibility in administering their programs as described above, there are several requirements which State VR agencies must meet. Among those most applicable are State VR agencies' assurances that:

(a) VR services are provided for purposes of determining VR eligibility and for carrying out the Individualized Written Rehabilitation Program (IWRP);

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(b) the age of an individual, in and of itself, will not be the deciding factor in eligibility determination. Rather, age relevancy is the point in life when vocational planning, preparation, and a continuum of VR services (including services to determine rehabilitation potential and establish employment goals and intermediate objectives to attain such goals) are appropriate for a given individual;

(c) no handicapped individual or group of handicapped individuals will be excluded solely on the basis of the type of physical or mental disability;

(d) if a financial means test is included in the State plan, that test will be properly and equitably applied;

(e) severely handicapped individuals must be served first under any established priorities, and any other priorities will not discriminate on the basis of age, sex, race, color, creed or national origin;

(f) similar benefits from other service providers will be used where available; and

(g) authority for determining eligibility for, or the nature and scope of, VR services is vested in the State VR agency and cannot be assumed by or delegated to any other agency or individual.

It should be noted that special attention is accorded the severely handicapped as required by the Rehabilitation Act.

Use of "similar benefits" under the Rehabilitation Act

It was the intent of Congress that the similar benefits provisions are to provide vocational rehabilitation agencies with an organized method for assessing the eligibility of handicapped individuals for benefits under other programs and for drawing upon other programs to provide those services for which the individual would otherwise be entitled. This requirement contains considerable flexibility for State application in determining the nature and degree of cooperation with other agencies and in individual cases. Similar benefits need not be utilized when they would not be adequate or timely, or otherwise interfere with achieving the short or long range rehabilitation objectives of the individual. This

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condition applies to all VR services, but specifically by law to physical restoration and maintenance. While other services (including training other than that in institutions of higher education) are not subject to mandatory similar benefits provisions, the State VR agency would look first to other appropriate sources, such as free public education generally available to all children in the State.

Availability of services as key to use of "similar benefits" by VR agencies

Issues have been raised involving circumstances under which available special education and related services will be provided to meet an intermediate objective 1/, under both an IEP and an IWRP. When "special education" and "related services" are available and the handicapped child is entitled to receive those services, such services are a similar benefit.

The key concept is "availability". The service must be one that is needed for both education and rehabilitation purposes and which the education agency can provide in a timely fashion, meeting the quality level needed for the intermediate rehabilitation objective relating to the attainment of long range employment goals.

Therefore, when a service is needed for VR purposes but is not available from the education agency, then the rehabilitation agency cannot look to education for a similar benefit, and may assume responsibility for providing that service (directly or by using other similar benefits which may be available outside of education).

The following services are considered to be particularly important in meeting the unique needs of handicapped individuals (see also Attachment A) and may not be generally available to handicapped students in the education setting: (1) Physical and mental restoration services; (2) General and special medical examinations; (3) Transportation in connection with the provision of other

1/ Intermediate rehabilitation objectives: the steps which must be achieved before the long range vocational goal can be attained, i.e., medical, social, personal, vocational outcomes which result from provision of services.

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vocational rehabilitation services including, for example, to job training sites where placements have been made cooperatively by the school and rehabilitation agency; (4) Telecommunications, sensory and other technological aides and devices; (5) Job development and placement in suitable employment; (6) Post-employment services necessary to assist handicapped individuals to maintain their employment; and (7) The purchasing of occupational licenses, tools and equipment necessary for entry into employment.

Services such as those listed above would not be required by the majority of handicapped students. They may be required for the more severely impaired students to assist them to become well-adjusted and suitably employed.

Cooperative Arrangements

It should be determined by State education and rehabilitation agencies which services and under what conditions such services can be made available by each agency and provided to handicapped students. Formal cooperative agreements between those agencies should establish specific guidelines for providing the essential services needed by the handicapped student. These cooperative agreements should with respect to services define as a minimum (1) how the services would be a component of a student's IEP and IWRP; (2) benefits to be made available by each agency; (3) eligibility criteria.

Cooperative arrangements between the State VR agency and the State Education Agency can establish the specific responsibility of each agency in the provision of services to handicapped individuals under an IEP and an IWRP particularly where the State Education Agency is unable to provide such services. Additionally, with respect to availability of services for handicapped individuals through vocational education at the post secondary level, the State VR agency should investigate the services available through vocational education for handicapped individuals for post secondary training at less than the baccalaureate level.

State VR agencies must keep within the provisions, intent, and spirit of the Rehabilitation Act. They must work within arrangements that recognize the expansion and contraction of services capability, and make accommodations for such changing availability of resources. In this connection, the State Plan for VR services requires that cooperative arrangements be reviewed annually for conformity

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to established goals and procedures to maximize the use of similar benefits. It is recognized that availability of service falls in the area of negotiable services rather than basic education services. It is further recognized that where a State program has the flexibility to utilize direct State funding, Title XX social services funds, or other funding sources, there is an inherently greater potential for more flexible cooperative arrangements.

Collaborative development and execution of the IEP and IWRP

Each child served under P.L. 94-142 must have an Individualized Education Program (IEP). Each handicapped individual served by the VR program must have an Individualized Written Rehabilitation Program (IWRP), except for diagnostic services. The education agency does not have to provide and pay for all services in an IEP. The same is true for VR and its IWRP. Services under an IEP or IWRP may be paid for by the other agency, or some other community resources. The IEP may contain reference to services which are, in fact, provided under an IWRP, and vice versa.

Both the Rehabilitation Services Administration and the Office of Education strongly encourage State education agencies and State vocational rehabilitation agencies to develop collaborative IEPs and IWRPs at the earliest time appropriate to each eligible individual. One guiding principle is that the VR agency should not be expected to provide and pay for services for handicapped students which are afforded non-handicapped students in the school setting, as required under Section 504 of the Rehabilitation Act. Additionally, VR agencies cannot provide services at a point in time where such services meet only educational needs and do not appropriately fit into a continuum of services under an IWRP leading to a vocational objective. VR involvement might occur on an individual basis as early as secondary school entry for pre-vocational planning purposes which normally would not involve expenditure of funds at that stage. Later on, VR should become involved at least by the terminal year (graduation or termination for other reasons) with students who are expected to need VR services.

Cooperative Funding

For a number of years, Federal Financial Participation (FFP) has been available for expenditures made in support of cooperative programs involving State VR agencies and State

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or local public agencies. These agreements are required to meet the specific requirements of Section 1361.13 CFR 45. The Rehabilitation Services Administration in Program Instruction 78-22 dated June 5, 1978, terminates Federal Financial Participation for expenditures made and certified to the State vocational rehabilitation agency under a cooperative agreement, by the participating State or local agency.

Federal Financial Participation continues to be available for expenditures made in support of cooperative programs between State VR agencies and other State or local agencies. Requirements for FFP are that the cooperative program meets the requirements of Section 1361.13 CFR 45 and State funds expended are directly appropriated to the State VR agency or are transferred to the VR agency by the participating State or local agency.

Sharing personal information between agencies

Various laws and regulations govern the sharing of personal information in different ways. Legislation and regulations applicable to education records allow rather free access by the individual to his own records. Many programs will share information with other agencies under conditions that such information will not be further divulged. VR case files often contain information obtained from a variety of sources, some of whom do restrict further release. To address this problem and others, RSA is currently working on revisions to regulations and guidelines dealing with access, disclosure, and protection of personal information. Until these problems can be worked through, VR agencies may permit the sharing of information only on a selective basis in accordance with State policies implementing section 1361.47 of the Federal regulations.

Both Federal agencies recognize that the education and rehabilitation programs administered by each State vary in content and structure and that each State must develop inter-agency agreements which will permit the best use of each program for the individual's benefit. Attached to this memorandum is a listing of services which may be appropriate under P.L. 94-142, P.L. 94-482 (Vocational education), and P.L. 93-112 (the Rehabilitation Act).

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This letter is part of a continuing joint effort between the Offices of Education and Rehabilitation Services to assist State agencies in establishing action plans and resolving impediments for coordinated services to handicapped individuals. A high level interagency collaborative team from the Office of Education and the Rehabilitation Services Administration, including representation from CSAVR, NASDSE, and NASDVE, will continue to meet from time to time to further this process and to resolve problems identified by State agencies which require our joint attention.

Any State agency or association referred to in this memorandum which requires assistance in resolving policy or regulatory impediments or questions are invited to submit such to the persons identified in Attachment B. Requests should contain, as a minimum, a statement of the problem, agencies involved, implications of the problem, alternatives considered, preferred alternative, and the timeline for Federal response.

Ernest L. Boyer, U.S. Commissioner of Education

Robert R. Humphreys
Commissioner, Rehabilitation Services Administration

Edwin W. Martin, Director
Bureau of Education for the Handicapped

Daniel Dunham, Director
Bureau of Occupational and Adult Education

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ATTACHMENT A

The following table represents a revision by the National interagency team of one initially developed by a joint CSAVR-NASDSE Task Force. Under Federal laws and regulations, all of the activities listed below can generally be provided by special education, vocational rehabilitation, and vocational education, with the exception of those activities marked with an "*". Asterisk marked activities are excluded under most circumstances or lack authorization in the statutory authority for that program.

It is expected that each of the listed activities will be addressed in the development of collaborative service agreements within each State.

ACTIVITIES	SP ED	VR	VOC ED
Find Activities:			
1) Public awareness			
2) Professional awareness			
3) Mass screening		*	*
4) Individual screening			
Cross Referral:			
Assessment Activities:			
1) Psychological			
2) Social/home/peer			
3) Educational			
4) Speech & language			*
5) General medical examination			*
6) Specific medical examination			*
7) Vocational interest/aptitude			
8) Work evaluation 1/			*

1/ Usually provided in private rehabilitation facilities to determine work potential or employability.

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ATTACHMENT A - PAGE 2

ACTIVITIES	SP ED	VR	VOC ED
Program Planning:			
Services:			
1) Occupational skills instruction			
2) Academic/vocational supporting instructions			
3) Counseling - academic adjustment			
4) Counseling - personal adjustment			
5) Counseling - vocational adjustment			
6) Medical services other than diagnostic	*		*
7) Mental therapy			*
8) Aids/devices, etc. - individually owned	*		*
Aids/devices, etc. - for learning and job training site accommodations			
9) Interpreter & reader services - for personal use or home study	*		*
Interpreter & reader services - for learning and job training site accommodations			
10) Other related services, i.e., OT, PT, speech correction			*
11) Job development			
12) Job placement			
13) Post-employment services	*		
14) Occupational services (tools, equipment, etc.) - individually owned	*		*

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ATTACHMENT A - PAGE 3

ACTIVITIES	SP EC	VR	VOC ED
15) Family support services			
16) Transportation			
17) Subsistence while in training	*		*
Architectural Barrier Removal:			
1) Individual accommodations	*		*
2) Home accommodations	*		*
3) Learning site accommodations			
4) Job training site accommodations			

NOTE: Work study, work experience, OJT, etc. have not been included in the above listing because of the numerous and varying definitions and conditions applicable to these services under the programs. They will be addressed in subsequent materials.

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ATTACHMENT B

Bob Heneson-Walling
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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF HUMAN DEVELOPMENT SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, D.C. 20201

PROGRAM INSTRUCTION
RSA-PI-79-2
December 20, 1978

TO: STATE REHABILITATION AGENCIES (GENERAL)
STATE REHABILITATION AGENCIES (BLIND)

SUBJECT: Transmittal of Second Joint Letter from the Commissioner of Education and the Commissioner of Rehabilitation Services

CONTENT: The U. S. Office of Education (Bureau of Education for the Handicapped and Bureau of Occupational and Adult Education) and the Rehabilitation Services Administration, in collaboration with the National Association of State Directors of Special Education, National Association of State Directors of Vocational and Technical Education, and the Council of State Administrators of Vocational Rehabilitation, have been continuing their joint efforts to assist State agencies in establishing action plans and resolving impediments for coordinated services to handicapped individuals.

The attached jointly signed memorandum was endorsed by both the Committee on Interagency Relationships and the Executive Committee of CSAVR at the recent CSAVR Fall meeting. This memorandum supplements a previous joint communication of October 17, 1977 by providing additional clarifying guidance on the cooperative use of programs, and announces a national initiative to expand and improve the service delivery system to handicapped individuals among the identified agencies.

In addition to the specific issues addressed, note that:

(a) State agencies are expected to develop new agreements during Fiscal Year 1979;

(b) A national training workshop for special educators, vocational educators, and rehabilitation administrators has been scheduled for February 1-2, 1979; and

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PAGE 2 - STATE REHABILITATION AGENCIES (GENERAL)
STATE REHABILITATION AGENCIES (BLIND)

(c) A mechanism has been established to assist State agencies in resolving problems which impede progress in their endeavors.

Regional Office staff will be glad to assist you in any way they can on this important initiative.

INQUIRIES TO: RSA Regional Program Directors

Commissioner of Rehabilitation Services

Attachment

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DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF HUMAN DEVELOPMENT SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, D. C. 20201

PROGRAM INSTRUCTION
RSA-PI-79-25
August 22, 1979

TO :STATE REHABILITATION AGENCIES (GENERAL)
STATE REHABILITATION AGENCIES (BLIND)
RSA Regional Program Directors

SUBJECT :Revised RSA Policy Governing Use of Certified Expenditures as State Match in Cooperative Programs Pursuant to 1361.13 of the Federal Regulations

EFFECTIVE DATE: Date of this Program Instruction

CONTENT :Program Instruction RSA-PI-78-22, dated June 5, 1978, terminating FFP for third party funding agreements is rescinded as of the date of this Program Instruction. The necessity for rescinding Program Instruction RSA-PI-78-22, was the result of the Office of Management and Budget rejecting RSA's request to deviate from the Federal matching policy set forth in OMB Circular A-102.

The primary reason for the rejection of this request to eliminate the use of certified expenditures as State match is that OMB believes such a policy would be contrary to the spirit of the Intergovernmental Cooperation Act. More specifically, OMB believes such a policy would unnecessarily interfere with the rights of States to determine the internal arrangements that are best suited for their programs.

OMB has recommended stronger monitoring of the cooperative programs by Federal and State personnel. If tighter monitoring does not eliminate abuses in the use of certified expenditures in certain States, then the requirement that State matching be done on a cash basis will be considered, but only on a State-by-State basis.

Control over expenditures for the State vocational rehabilitation program rests with the designated State VR unit. Problems which led to the June 5, 1978 policy decision on third party funding, resulted from the lack of adherence by State agencies to VR regulations and guidelines designed to protect the integrity of State expenditures for vocational rehabilitation. We believe that cooperative programs involving the use of certified expenditures can operate within the requirements spelled out in VR regulations only when State Directors and VR staff directly assigned to supervise these programs, are fully aware of Federal financial participation requirements and assure

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themselves, at all times, that those requirements are met for each cooperative program.

In order to strengthen the monitoring of cooperative programs, RSA will revise Section 1361.13 of the VR regulations to require the State unit to review each cooperative program annually to determine its effectiveness and to assure that it is being operated in compliance with the requirements of the written agreement. These annual reviews and evaluations of cooperative programs will be submitted to and reviewed by the RSA Regional Program Director. A copy of these evaluations will be forwarded to the Commissioner of RSA. These evaluations will be utilized by RSA Regional Offices to effect corrective action in the cooperative programs where required.

RSA Manual Chapter 510, (State and Federal Funds: Matching) and Chapter 1101 (Accounting Systems) will also be revised to include stronger monitoring and follow-up procedures with respect to cooperative programs.

In accordance with the CSAVR Third Party Agreement Task Force, RSA will work closely with CSAVR in developing cooperative agreements and cooperative programs. The goal will be to insure that any present problems or abuses are eliminated and that States will have adequate controls in place to assure effective and accountable cooperative programs.

Attached for your information is a summary of background information on cooperative programs.

INQUIRIES
TO : Division of Resource Management
RSA Central Office

Commissioner of Rehabilitation Services

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LEONARD W. HALL
Assistant Commissioner

DIVISION OF
SPECIAL EDUCATION

DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
STATE OF MISSOURI
Jefferson City

March 21, 1980

MAR 24 1980

Senator Jennings Randolph
Chairman, Subcommittee on the Handicapped
4230 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Randolph:

Thank you for your letter of March 7 requesting specific follow-up information subsequent to the testimony which I presented to the Subcommittee on the Handicapped on March 3.

Attached are responses to the five questions which you presented. I hope this information is helpful to you and the Subcommittee in its work. If there is anyway which CCSSO, NASDSE or I personally can be of assistance, do not hesitate to call.

Your continued leadership and support of an improved quality of life for this nation's handicapped children and youth are appreciated.

Sincerely,

Leonard W. Hall

Leonard W. Hall
Assistant Commissioner

oe
attachment
cc: Dr. Arthur I. Mallory
Dr. James R. Galloway

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RESPONSES TO QUESTIONS FROM SENATOR JENNINGS RANDOLPH
CHAIRMAN, SENATE SUBCOMMITTEE ON THE HANDICAPPED

1. How would you compare your State's secondary school free appropriate public education to that available for elementary school students?

A. As appears to be the case in all states, the development of FAPE at the secondary level lags behind the emphasis provided for elementary school students. This is due to a number of causes not the least of which is the logical emphasis placed in special education upon the developmental years and the need for the earliest possible intervention. As limited funds and resources become available, they are applied to the younger population. Only this year have we in Missouri felt that we are beginning to appropriately address the issue of secondary FAPE. This has been done primarily through our CSPD efforts and the intensive and extensive inservice education being provided to school administrators and instructional personnel at the secondary level. We have established a close working relationship with the Division of Vocational Education and more recently with the Division of Vocational Rehabilitation. Hopefully our cooperative efforts will result in more tangible program development and improvement at the secondary level.

2. What are your high school programs preparing handicapped young adults to do in the future? Go to work? Go to a sheltered workshop? Obtain additional education or training?

A. Just as each handicapped individual within the population of special education beneficiaries is different, so is the preparatory program for adulthood. Generally in our high schools we are emphasizing vocational training and work experience programs for the majority of the disabled learners in school. However, there are a good number of learning disabled youth for whom we are trying to modify curriculum in order to provide them with sufficient academic preparation to pursue higher education either through a junior college or a baccalaureate level program. The sheltered workshop emphasis is limited most generally to the severely and profoundly handicapped for whom services are provided within a network of 61 State Schools operated directly by this office on behalf of the State Board of Education.

3. What have been the increases in administrative/supervisory and in support staff in your special education department since 94-142 was enacted?

A. Presently we have a personnel request of five professional and two support FTE pending before the General Assembly. We are optimistic that this request will be approved; if it is, it will reflect the first additional staff provided to the SEA since the enactment of PL 94-142. This has been a major impediment in our ability to respond to the administrative and monitoring requirements of the law.

4. Your testimony does not address the implications of Armstrong vs. Kline for your State. Would you comment, please?

A. The issue of four-year programming, as addressed by Armstrong vs. Kline is an important one. We do have at least one due process hearing pending which is pursuing this issue. However, it is our view that this reflects just one of several questions which appear to be most logically pursued through the courts and is not an issue inherent in the law that should be raised as an impediment or something that is worthy of concern in the

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oversight hearings process. It may be that BEH regulation could be helpful; however, any regulation would be a judgment call, and it has been our experience that judgment calls can best be made after the careful study and cross examination provided through the judicial process.

5. In your testimony you note that there are problems with interagency cooperation and specifically make reference to the fact that vocational rehabilitation has withdrawn its support. You also note that this has occurred because of a change in Federal auditing procedures. Could you explain further, please.

A. Recently a federal audit of Vocational Rehabilitation Programs raised the question as to whether or not Vocational Rehabilitation funds should be provided for services that may be required under the definition of PL 94-142. Within those discussions we received direction from GAO that Vocational Rehabilitation dollars should be "last dollars" and not be applied for any service which could otherwise be made available with PL 94-142 or state funds. Subsequently, there has been some clarification and softening of interpretation but clearly the progress that was underway within this specific interagency cooperation was impeded as a result of the GAO audit, interpretations and reactions by Vocational Rehabilitation personnel.

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Senator STAFFORD. For the subcommittee, our appreciation to you both for being here. I can assure you that the members of the subcommittee who are not here will read your testimony that has been placed in the record for us.

Thank you very much.

The Chair will invite Dr. Wyatt, of Decatur, Ga., who is the president, of the Council for Exceptional Children, and Fred Weintraub, Assistant Executive Director for Governmental Relations, Council for Exceptional Children, to take the witness stand.

We welcome you both here. The Chair has known Mr. Weintraub for some time, and favorably. Dr. Wyatt, we are glad you are here.

We will leave the protocol as to who goes first to you gentlemen, and we note for the record, Fred, that you are accompanied by Bruce Rameriz, who is the Director, American Indian Special Education Project.

Please proceed.

STATEMENT OF KENNETH WYATT, PRESIDENT, COUNCIL FOR EXCEPTIONAL CHILDREN, DECATUR, GA.; AND FREDERICK WEINTRAUB, ASSISTANT EXECUTIVE DIRECTOR, GOVERNMENTAL RELATIONS, COUNCIL FOR EXCEPTIONAL CHILDREN, RESTON, VA., ACCOMPANIED BY BRUCE RAMERIZ, DIRECTOR, AMERICAN INDIAN SPECIAL EDUCATION PROJECT

Dr. WYATT. Thank you, Mr. Chairman. I am Dr. Kenneth Wyatt, professor of special education at Georgia State University in Atlanta, Ga., and I am president of the Council for Exceptional Children. With me today, as you noted, are Mr. Fred Weintraub, who is the assistant executive director for governmental relations of the Council for Exceptional Children, and Mr. Bruce Rameriz, director of the American Indian special education project at CEC.

As you know, the Council for Exceptional Children is an organization of some 65,000 members, concerned with the provision of quality educational opportunity for all exceptional children, both handicapped and gifted. We have federations and chapters in all States.

We certainly want to thank you for the opportunity of appearing before this very distinguished body and to offer our views during these oversight hearings.

We also wish to express our sincere appreciation and admiration from the members of the Council for Exceptional Children, for your well recognized efforts on behalf of America's exceptional children.

As a former special education recipient myself, I am particularly sensitive to and appreciate of your support, and I wish at times that your predecessors had had your foresight in relationship to this kind of legislation.

It is now nearly 4 years since the enactment of Public Law 94-142, and this, combined with the State legislation and court decrees, is beginning to make a significant difference in the lives of millions of special children.

We have completed 2 years of implementation by Federal, State, and local agencies, and we are well aware of the criticisms put forth, which I think are probably inevitable with any piece of legislation that has created such a significant degree of change.

I would have to say in my own personal experience that 94-142 is gaining increasing acceptance and support not only from special educators, some of whom were suspicious, I think, themselves, when the legislation was passed, but from regular educators as well. I say that from personal experience. If I were not here today, I would be teaching a class of regular educators about the concerns of special education and the identification and training of exceptional children, and I will have to say they are now most receptive. So I think that is very positive.

We have reviewed and analyzed the testimony submitted to the oversight committees to date, and we have come up with these conclusions.

First of all, we firmly believe that Public Law 94-142 is basically a very sound piece of legislation. Many of the criticisms that are leveled against that piece of legislation are, in actuality, we feel, reactions to State and local policies, and not to the actual provisions of the Federal legislation.

We feel that, like any good television set, it may be necessary to adjust or fine-tune the instrument from time to time, but the set itself, we feel, is highly functional, and we are most pleased.

Today, we would like to divide our testimony, if you will, into two sections. I am going to ask Mr. Weintraub to talk about Public Law 94-142, the specifics of it, and the issues that are currently presented, and then, if it is all right, I would like to make a concluding statement in relationship to some major related policy issues which we feel are going to need to be addressed in the 1980's.

Senator STAFFORD. That would be most agreeable to the committee.

Mr. WEINTRAUB. Thank you, Senator.

The first issue that we would like to address and put aside is the money issue. As you know, in the first years under the law, the Congress through its initiative appropriated funds that were equal to the authorization levels, and in a sense, in those first years, the fiscal commitment was matched.

However, we have reached a point now in which, as some suggest, we can march an army between the authorization levels and the appropriation levels. The figure of $874 million, which is the amount of money that is appropriated for the next school year, is dramatically below the authorization level of approximately $2.1 billion, and the administration's request of $922 million for fiscal year 1982 would drop us even further behind, given an estimated authorization level of approximately $3.2 billion for that year.

We are concerned that not only will we reach a point at which we are not meeting the authorization levels, but we are also beginning, with the 1982 figure, to fall below the percentage level appropriated for the previous year. So if we use the 1981 figure, the administration's level is about 12 percent; if the recommended 1982 budget figure is kept, it would drop us below the 12-percent level.

And we firmly believe that there needs to be a constant demonstration of good faith between the Federal Government and the State and local governments.

While we recognize that the achievement of the multibillion-dollar level funding may not be possible, we do believe that some reasonable increases are necessary to demonstrate that good faith.

The second issue concerns child count. There has been much discussion about the child count of approximately 3.8 million children being lower than the anticipated count of 6 or 7 million.

It is important to understand that the annual child count is not a census of all handicapped children. It is simply a count of certain children for the purposes of generating a formula. We cannot make the two synonymous.

We have studied this issue, and we would like to report several things that we have found.

One is that we do find that there are children trapped between the initial referral for evaluation and the actual evaluation itself.

One of the problems in 94-142 regulations, is, that while there are time lines for everything else, there are not time lines between the point at which a child is referred for evaluation and when that evaluation must be completed. There is a time line for when the child must receive services.

Thus, we find that if school districts want to avoid serving children, what they do is simply jam up the evaluation system so that children are not being evaluated very rapidly, and therefore there is no requirement that they be served.

Also, the initial estimates of the number of handicapped children prior to the enactment were estimates given a population of zero to 21. However, the law does not deal with that full age range, and therefore, we are counting a smaller age population in many ways than the initial estimates reflected.

Third, the initial estimates often reflected what we call disability count, so that if a child was mentally retarded and speech-handicapped, then that child was counted as two children instead of one child. The 94-142 child count is only a single count per child.

Fourth, the 94-142 does not permit cumulative counting. So children who are receiving multiple services are not counted more than once. Also, we are not counting children at any point at which they enter the school year.

For example, if a child enters special education in September, and then has his needs met in November, and another child enters, we are only counting that child on December 1, whoever is there on December 1, not all of the children who happen to be served during the course of the year.

Also, it is important to remember that many disabled children participating in the public school system do not require special education—that is, there are more handicapped children than there are children who are receiving special education, and 94-142 only counts those children receiving special education.

Well, I will not go on, but what I am trying to demonstrate is that we think there are a number of reasons as to why the child count comes out at a figure less than people would otherwise have anticipated.

Also, we do not find ourselves terribly concerned about the issue. We think that we ought to celebrate if in fact there turn out to be less handicapped children than we otherwise thought there would be, and that we would recommend that there is no need for a

gnashing of one's teeth and a beating of the bushes to go find children who might not, in fact, be there.

At the same time, we would have to admit that there still remain children who are not being served and need to be served, and there needs to be very careful attention to that issue.

We have looked at the issue of definitions, and one of the things that does concern us is that what we find is an inconsistency of definitions from State to State, so a child who is handicapped in one State or is recognized and protected under 94-142 in one State, moves across the border into another State and then finds himself not so protected.

In some States, they have moved to making their definitions much stricter, and in fact, have reduced the population they are obligated to serve, simply by coming up with more conservative definitions.

One of the areas that we are particularly concerned about is the area of the seriously emotionally disturbed. In that area, we are presently serving less than 25 percent of the suspected incidence. One of the factors that we find from people is the belief that the definition presently being used by the U.S. Office of Education and by State government is too conservative, too restrictive.

We are concerned that the regulations and procedures followed by the U.S. Office of Education require that the annual child count be submitted to the Bureau of Education for the Handicapped, by diagnostic label. So when States submit their count to BEH, they submit it by the number of mentally retarded children, the number of blind children, the number of deaf children, et cetera.

The law, under section 618, required the Bureau of Education for the Handicapped or the Office of Education to report to the Congress annually on the number of children being served by disability. It did not say conduct the child count by disability. And in fact, in section 618, the Congress suggests that this can be done through surveys and a variety of things to report that data.

What we are finding is that, while on the one hand the law does not talk about labeling children -in fact, the law carefully avoids the necessity to place a label on a child in order to serve the child—the child count procedure being followed by the Office of Education is in fact requiring the labeling simply to get the data.

What we are suggesting is that this committee urge the Office of Education to in a sense cease that practice and to simply get their data on numbers of kids by disability through other mechanisms rather than requiring it to occur through the child count procedure.

On the private school issue, which seems to be of great controversy, particularly that part pertaining to the provision of education to children in parochial schools, it would be our hope that the Congress would make it clear to the Office of Education that it was its intent to assure the fiscal participation of children in parochial and other private schools, but to not extend to those children all of the rights and other protections under the law. If it was the Congress intent to extend all of those protections—which I do not believe that it was—then we run into a very difficult situation in terms of the traditional separation of church and state.

However, if it is more of the title I approach, then there is a much narrower point of view, thus providing the Office of Education a great deal more flexibility in terms of trying to carry out the legal requirements of the law. This is an area where I think guidance from this committee to the Office of Education would be very helpful.

We are concerned about the area of personnel development, that there needs to be continuation of the training of persons in the area of special education.

One of the things that we are finding is that while we are getting a greater supply of trained personnel a distribution problem remains. In Fairfax County, Va., there may be many qualified special ed people applying for every job, but 100 miles south, there are jobs where people are not applying for them.

What we are suggesting is that there may be some validity in developing a national special education job bank which would attempt to match the supply to the demand. I think this is particularly important in the areas of the more severe disabilities, particularly where people are being trained at more centralized positions. A State like Vermont may not be training, for example, teachers of the deaf-blind, but may need such teachers, where Michigan may be training the people, but they do not know that the jobs are available in Vermont. Such a job bank, we do not think would be a very expensive or difficult thing to operate, but may in fact help resolve some of the difficulty.

We would like to call your attention to what we call special populations. What we are finding is that the law is working very well in certain places and for certain groups and not working very well for certain other groups.

What we are finding is that among certain minority children, we have some of the traditional problems that those children have historically faced, impacting on the effective implementation of the law.

We would like to particularly call attention to the problems facing American Indians, the problems facing handicapped children in juvenile correctional facilities.

We are also finding that many exceptional children are denied other benefits that they would receive if they were not handicapped. You may have heard one of the major battles that we have going on right now pertains to title I of the Elementary and Secondary Education Act. Title I somehow came up with the notion that because handicapped children are protected under 94-142, therefore, they are not, then, eligible for any of the benefits of title I even if they are also title I-eligible. Somehow the Congress in its wisdom decided, by passing 94-142, to exclude kids from participating in anything else. Well, I do not think that was the intent of the Congress, but we have this constant problem going on; it not only applies to title I, but applies to programs like bilingual education.

We must remember that handicapped children are not just handicapped children; they are also bilingual, they are black, they are also poor, and so forth, we have got to assure there are opportunities to participate on a broader scale.

Related services have been discussed extensively by both of the previous witnesses. We are concerned that school systems should not be required to meet every life need of a child.

On the other hand, there are many appropriate and necessary related services which should be provided. The question is drawing the line.

We urge the Congress to instruct the Office of Education to provide ongoing clarification respecting this delicate problem. Superintendent Riles was correct that it is difficult trying to get clear answers to these problems.

However, at the same time some of these issues are resolving. It takes time to understand the complexity of a problem before one goes ahead and clearly sets up a policy as to how to resolve it.

But we cannot continue to allow school districts to be in the situation of having these issues simply resolved by each individual hearing or each individual court decision. Therefore, greater clarity needs to be given to this issue.

At the same time, we need to assure that other agencies of government, particularly the Federal Government, do not reduce or exempt themselves from past responsibilities they have had to serve handicapped children.

What we continue to find is the notion of the "last dollar." "We do not have to do it, or we do not have to support it, as long as somebody else will do it if we do not."

What that does is place the education system, because it has the ultimate responsibility, always in the situation of having to pay for it.

We have got to assure that vocational rehabilitation, mental health, public health, and other services that were previously available to children continue to be available.

I would like to skip over to issues pertaining to the American Indian and Alaska Native handicapped children.

Senator Stafford, we believe it is very important to understand the nature of this problem. In a sense, we have, when we deal with American Indian handicapped children, a Federal school system. It is a school system that does not have a State legislature, does not have a Governor, does not have a State board of education, does not have the traditional things that we generally assume when we deal with a State education system.

In a sense, the Congress of the United States is the school board for the schools run by the Bureau of Indian Affairs. At the same time, the Congress of the United States has not assumed on a regular basis the oversight and regulatory function that a school board in a State or in a school district would otherwise have.

While progress has been made in terms of delivering education to American Indian handicapped children, we are not anywhere near suggesting to you at this time that 94-142, in its even basic sense, is being complied with.

Whatever strides have been made have been made because the Appropriations Committees of the Senate and House have taken some leadership in trying to see that something happens.

I have cited in our testimony a number of problems and Mr. Rameriz or staff will be able to comment further on questions that you may have.

There are several things that we would recommend to you. One is we desperately need regulations. It is incredible; the Bureau of Indian Affairs runs an education system without any regulations. You cannot run a special education program of the magnitude as required by 94-142 without some form of regulations.

We have been promised, year after year, that regulations will be promulgated. They still have not been promulgated. We are told they will be shortly. We think it is time for this Congress to say they must be promulgated.

Second, that the plans submitted by both States and BIA contain necessary joint agreements. One of the dilemmas we have is, for example, in the State of Alaska, we have a BIA who says, "It is not our responsibility to serve these certain group of kids. It is Alaska's responsibility." Alaska says, "It is not our responsibility. It is BIA's responsibility."

Well, the result is that kids sit at home. We cannot have that kind of situation. What we need is formal agreements between those States over the question of jurisdiction pertaining to the children, and we believe that BEH needs to enforce the development of such agreements.

We would like to ask this committee to take a look at varying discretionary authorities under the Education of the Handicapped Act, and under Public Law 89-313, and consider opening participation in these programs to the Bureau of Indian Affairs.

The present law does not recognize BIA as a State, except under 94-142, so it is not eligible, for example, to participate as a State would on the part D personnel development programs. It does not receive 89-313 support, although it does serve children in State-supported schools and institutions, and cannot count them for 94-142 purposes and also cannot count them for 89-313 purposes, because of their unique situation.

We think a look at that problem needs to be taken.

And the final comment would be to urge this committee to assume, in a sense, the State board of education responsibility as it pertains to education of handicapped children, to hold direct oversight hearings on the question of delivery of services to handicapped children under BIA.

We would also urge the committee to assume the same responsibility as it pertains to handicapped children in other Federal programs. For example, the Overseas Dependents Schools educates handicapped children. At the same time, there is no Government or congressional agency that oversees what is happening. Under their own laws, they are required to comply with 94-142, but they are the only ones that oversight their compliance.

The same thing applies to kids in Federal prisons; section 6 schools. What I am saying is that there are a whole series of schools that are Federal jurisdiction schools where this committee, I think, needs to assume oversight responsibility.

Thank you.

Senator STAFFORD. Thank you very much, Fred, for a very good statement.

Dr. Wyatt, before you summarize—I think that was your expressed intent—did Mr. Rameriz have anything he wished to add? We would invite him to, if he cares to.

Mr. RAMERIZ. I would just like to, at this point, expand a little on what Mr. Weintraub indicated, in terms of the Bureau of Indian Affairs.

It has been 5 years since the passage of Public Law 94-142. States are making progress—steady progress. But yet, in our Federal trust relationship with the Indian tribes that translates into school systems on our reservations, we do not find the same kind of commitment, the same level of services or quality of services being provided at this point in time.

We find that the only way progress is made with respect to the Bureau of Indian Affairs and the type of educational services provided comes through pressure from the Congress.

As you look at the Indian communities that are served by BIA schools, you find a lack of advocacy groups. The parents are not organized into specific groups. The tribes are preoccupied with water rights, with mineral resources, with housing, with roads. In many instances, education has a very low priority.

The question becomes one of oversight from the Congress to push the Bureau of Indian Affairs to assure that children attending these schools have their rights and opportunities as other students would have.

Senator STAFFORD. Thank you, sir.

The Chair would ask you, Dr. Wyatt and Mr. Weintraub, do you want your full prepared statement to be made a part of the record here?

Dr. WYATT. Yes.

Senator STAFFORD. Without objection, we will make the whole statement part of the record, in that case.

[The joint prepared statement of Dr. Wyatt and Mr. Weintraub follows:]

STATEMENT OF

THE COUNCIL FOR EXCEPTIONAL CHILDREN

before

THE SUBCOMMITTEE ON THE HANDICAPPED

of

THE SENATE LABOR AND HUMAN RESOURCES COMMITTEE

with respect to oversight hearings on

THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975

March 3, 1980

Submitted on behalf of the Council by:

Kenneth E. Wyatt, President
The Council for Exceptional Children
Reston, Virginia

Frederick J. Weintraub
Assistant Executive Director
for Governmental Relations
The Council for Exceptional Children
Reston, Virginia

For additional background contact:

Joseph Ballard
CEC Headquarters
Telephone: 703/620-3660

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We thank you for the opportunity to appear before this distinguished panel of the 96th Congress to offer the views of The Council for Exceptional Children during the course of these oversight hearings with respect to P.L. 94-142, the Education for All Handicapped Children Act. May we also take this opportunity to express to you the continuing admiration and warm appreciation of the membership of the Council for your unrelenting efforts on behalf of America's exceptional children.

As you know, The Council for Exceptional Children is a national organization with a membership of approximately 65,000 professionals in the field of special education. One of the most fundamental ongoing missions of the Council, which has brought us to Capitol Hill on so many occasions through the years, is to seek continual improvement of federal provisions for the education of America's exceptional children and youth, both handicapped and gifted.

We find ourselves four years beyond enactment of the landmark Public Law 94-142, that most significant federal affirmation, in concert with corresponding state legislative mandates and court decrees, of the right to a free appropriate public education for all of this Nation's handicapped children. Furthermore, we have now completed two critical school years of federal, state, and local implementation of major substantive provisions of this Act.

Because this law addresses the needs of the child rather than systems-oriented factors, the Act certainly has generated its fair share of detractors. But we would continue to contend that the number of such detractors are far outweighted by the number of both organizations and individuals in this country who remain staunch supporters of both the mission and the consequent mechanisms of P.L. 94-142. We would further contend that various complaints always accompany any legislation that seeks significant and concrete change.

The Council has been engaged in an in-depth analysis of the testimony submitted thus far to both the House and Senate during these oversight hearings.

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We were particularly interested in identifying the source of each problem area raised in testimony, i.e., whether the problematic issue is a direct result of P.L. 94-142 or indeed is it, in fact, an interpretive or overlay problem at the state and/or local level. For instance, one of the most frequent complaints has been the paper work involved with the development of Individualized Education Programs (IEP). However, in each case, when studied further, the IEP documentation being required far exceeded federal requirements. Secondly, Congress has heard concerned parents and professionals describe the difficulty in obtaining all the needed qualified personnel necessary to implement full and appropriate special education and related services. Personnel shortages do indeed exist, however, it is not a reflection of faulty federal policy, but rather an issue to be addressed in relation to higher education program priorities and state education agency in-service planning.

At least two conclusions are unavoidable. First, P.L. 94-142 has been affirmed as fundamentally sound in its basic provisions. However, any law and its regulations needs fine tuning and must consider changes to meet emerging needs. Second, P.L. 94-142 must be perceived as the "minimum floor" for the Nation. In viewing it, we must be constantly sensitive to state and local overlay. At the same time, we do not want to constrain state and local policy when it further enhances the mission of P.L. 94-142. But in any event, we must be at all times inquiring "whose policy are we talking about?".

Mr. Chairman, we would like to divide our testimony into two sections. The first section might be called "P.L. 94-142-specific" issues. In addressing these issues, we wish to state at the outset that the Council is not necessarily calling for statutory change. In point of fact, we wish to emphasize the various avenues open to the Congress to achieve better implementation of its legislation. Our second section might be described as a discussion of major policy issues with respect to exceptional children and adults which we feel the Congress should address as we enter the decade of the 1980's.

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P.L. 94-142-SPECIFIC

The Fiscal Promise

In the first two years under the law, the federal government clearly lived up to the fiscal promise of P.L. 94-142. However, we are now deeply concerned that this escalating commitment as originally agreed to in P.L. 94-142 may be sidetracked in midstream. Very briefly, the figure of $874 million for school year 1980-81 (fiscal 1981), recommended by the Administration and duly appropriated by the Congress, is dramatically below the authority for that year of $2.1 billion. (See Attachment 1).

Obviously, we can now "march an army" between the authorization figures and actual appropriation figures under the aegis of P.L. 94-142. We urge the Congress to step back onto the escalator of fiscal promise.

Education Turnkey Systems, which has conducted a study of the implementation of P.L. 94-142, made the following pointed statement in its summary of preliminary findings:

> First, compared with recent education legislation, never have so many SEAs and LEAs initiated so many activities with relatively few federal resources to implement the provisions of a federal mandate. In all sites, some initiatives have been undertaken to implement the provisions as quickly as possible in spite of increased time burdens and scarce resources.

And herein lies the core of the issue: the school systems have worked during the last two school years to fulfill the mandate of P.L. 94-142 before actually having received much of the larger fiscal appropriations also attendant to P.L. 94-142. Now that state plan compliance is being achieved, those monies are flowing, and flowing rapidly. Nonetheless, the question is: does the Congress intend to honor its escalating fiscal commitment which does not stabilize until fiscal 1982? We do not believe that it would be an exaggeration to maintain that "The Nation is watching." We therefore believe that it is essential that the Congress appropriate a figure which constitutes a "good faith" acknowledgement of that escalating fiscal promise.

-3-

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Child Count

Mr. Chairman, much attention has been given lately to the issue of the allegedly low child count of handicapped children served nationwide. (Attachment 2). Initially, it must be borne in mind that this annual child count is not intended to be a complete census of all handicapped children, but rather a count that is submitted solely for purposes of generating the relative percentage of dollars going to each state and its local school districts under the terms of the P.L. 94-142 fiscal funding formula.

The Council for Exceptional Children, through its state organizations and Divisions, has been engaged in an ongoing assessment of the parameters of the annual child count. Our own survey trends plus those generated by other surveys suggest the following matters for consideration by the Congress:

(1) There is evidence of an incidence of children trapped between initial referral for evaluation and the actual evaluation itself. They are not counted because they are not being served. We feel that the Congress will wish to be attentive to the fact that, while the regulations provide a clear timeline between evaluation and implementation of an individualized program for each child, there is no such timeline between referral and evaluation.

(2) Initial estimates of the number of handicapped children nationwide prior to enactment of P.L. 94-142 were estimates within a population aged 0 to 21. But because P.L. 94-142 lacks a complete mandate for that full age range, the actual child count is centered largely in the traditional school age group, namely, aged 6 through 18.

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(3) Estimates of the number prior to enactment of P.L. 94-142 may well have included disability counts because of the nature of some state funding formulae. Rather than a count of children, one had a count of disabilities, meaning that a child was counted more than once if two or more disabilities were perceived.

(4) P.L. 94-142 does not permit a cumulative count. Under the Act, children may be counted for purposes of the federal funding formula only on December One of each year. A respectable case can be made that a good number of children pass in and out (for instance, speech therapy and programs for mildly handicapped children) of the special instructional environment during the course of a given school year, but that on any given December One, many of these children are "out."

(5) Many disabled children participating within the public school systems do not require special education as defined in P.L. 94-142. Therefore, they may not be counted. Some have referred to this group as the larger population of disabled children coming under the purview of Section 504 of P.L. 93-112, rather than P.L. 94-142.

(6) Many of our most severely handicapped children are counted for purposes of P.L. 89-313, the Title I, ESEA program of supplemental educational support for children in state operated or supported facilities. The law prohibits their inclusion in the P.L. 94-142 count. (Attachment 3).

(7) Many handicapped students are being served by other federal programs, e.g., Title I of ESEA, bilingual programs, and

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simply are not perceived as part of the P.L. 94-142 eligible count, whether they are in fact eligible or not.

Mr. Chairman, this recitation of considerations is not exhaustive. CEC is itself concerned that the child count reflects the sad reality of still unserved children, certainly in the 0 through 5 and 18 through 21 age ranges, and certainly in the light of increasing evidence of a referral to assessment logjam.

We wish, however, to emphasize that the P.L. 94-142 child count needs to be constantly viewed for what it is, and for what it is not. The child count is part of a mechanism to determine federal fiscal allocations to the states and localities. It is not a census of handicapped children. Furthermore, while we make no value judgment on the matter, we must remind ourselves that any substantial increase in the child count automatically means a corresponding increase in the annual authorization levels under the terms of P.L. 94-142.

We do wish to bring to the attention of the Congress two matters concerning the question of age ranges relative to the count. P.L. 94-142 allows the use of funds under the basic program for the special education of children aged 0 to 21. However, it only allows for a count of children aged 3 to 21. Put simply, we feel that if one can serve handicapped children aged 0 through 2 with federal dollars, one ought to be able to count those same children for purposes of generating the federal dollars.

Secondly, the very laudable preschool incentive grant program (Section 619 of P.L. 94-142) contains an incomplete preschool age range. While we will discuss the larger question of early childhood education later in this testimony, we would simply recommend in this child count segment that the preschool incentive program allow a count of children served, aged 0 through 5, and correspondingly allow the use of funds under the program for the same age

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range. The whole thrust of early childhood education is increasingly directed from birth to traditional school age. The current restriction of the preschool incentive program to ages 3 through 5 tends to act as a disincentive to that thrust. Moreover, if the full early childhood age range were allowed, this program would act as a most powerful incentive.

Definitions

Our own assessment of the testimony being presented to the House and Senate during this current schedule of hearings suggests a general concern respecting the definitions of handicapping conditions. This concern does not focus on the statutory definition, but rather upon its expansion in regulations in relation to state and local definitions, and the variance in definitions from public agency to public agency within a given state.

We as an organization have undertaken studies on this matter. Most recently one of CEC's professional divisions, the Council for Children with Behavioral Disorders, has been exploring the parameters of the federal definition for "seriously emotionally disturbed" as it relates to state and local definition and practice and suggests that the present federal terminology is too limiting.

The primary concern of CEC is that no child be denied the rights and benefits of special education consequent to definitional fluctuation. We therefore wish to bring to the attention of the Congress the fact that it is crucial that the U.S. Office of Education continue to study all aspects and implications of the definitions issue.

Secondly, the Congress requires (P.L. 94-142, Section 618(b)(I)(A)) the U.S. Commissioner of Education to report annually to the Congress the number of handicapped children in each state by diagnostic category. For efficiency purposes, the Commissioner accomplishes that responsibility by requiring such reporting to occur at the same time as the child count for purposes of the

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funding formula. While the whole direction of CEC and of special education as a profession is attempting to move away from diagnostic labeling of children, it is perceived that the federal government is, on the contrary, promoting such labeling, and promoting it for "money purposes."

We most strongly urge the Congress to order a termination of this practice of an annual December One count by diagnostic category. We do not feel that a statutory change is necessary. The same Section 618 allows for numerous devices, such as the survey, to acquire responsible information, if desired by the Congress.

Private Schools

The Congress clearly expressed its desire that children enrolled in private schools enjoy the fiscal benefits of P.L. 94-142. Section 613(a)(4)(A) states:

> (A) that, to the extent consistent with the number and location of handicapped children in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this part by providing for such children special education and related services.

The U.S. Office of Education, in its conforming regulations for P.L. 94-142, has allowed for the traditional set of options respecting how this participation may be accomplished. In our conversations with state and local officials, it has become apparent that the Office of Education should exercise more options than are currently reflected in the regulations; for instance, allowing school districts to add the count of handicapped children in private schools to their count for funding purposes and then pay such funds to the private school when the school district receives their federal allocation.

Secondly, the General Education Provisions Act allows for a "Commissioner by-pass" of federal funds directly to private schools, for the purposes of such programs as Title I of ESEA. Because of certain church-state constitutional requirements in some states, we recommend that the Congress amend the GEPA to allow the by-pass for P.L. 94-142.

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Personnel Development

Public Law 94-142 requires that every handicapped child receive the special education and related services that are necessary for that child to reach his full potential. This requirement presents the enormous administrative challenge of making available a wide array of services. A fundamental step in the provision of such services is the preparation of necessary personnel. In light of the least restrictive environment and related services provisions of the law, the personnel required to carry out the mandate far exceed the number of fully-qualified personnel available. In addition to the critical shortage of special education teachers, speech therapists, psychologists, school social workers, audiologists, occupational and physical therapists, and teacher aids, there is a continuing need to expand the knowledge and skills of regular educators.

Thus far, both houses have heard testimony from many people, including parents, advocates, teachers and administrators. Nearly every witness has identified manpower needs as an area of concern. In fact, in some instances personnel needs have been pinpointed as the single most important factor to successful implementation. Many of the issues raised have been:

- the in-service training needs of regular education teachers and auxiliary personnel, both in the areas of educational needs of handicapped children as well as interprofessional working relationships;
- the supply and demand imbalance for special educators and related service personnel (i.e., preservice needs); and
- the lack of adequate federal resources for both preservice and in-service programs.

As part of their first P.L. 94-142 Annual Program Plan, states were asked to identify personnel available and needed. As one area of personnel training needs, states identified the in-service training needs of their current per-

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sonnel. The states anticipate providing special education in-service training to nearly 50,000 persons in school year 79-80. (See Attachments 4, 5, 6, 7, 8, and 9).

While we agree wholeheartedly that in-service programs are needed for all personnel, we cannot overlook the fact that there is an alarming greater demand than supply of special educators. Special educators are not only needed for direct services to children, many of whom may never be in a regular education setting, but also for support and consultation to the regular education setting.

In this regard, states have identified their special education personnel needs. The states in their plans estimated that an additional 65,000 special education teachers would be needed for the 1978-79 school year and 85,000 for 1979-80. However, higher education institutions are presently producing only 20,000 new special educators a year. Other personnel needs include an additional 31,000 teacher aids, 5,000 psychologists, and 3,000 speech pathologists and audiologists.

Additionally, the preservice training needs of American Indians and Alaska Natives wishing to provide special education and related services to American Indian and Alaska Native handicapped children is not solely the responsibility of the Bureau of Indian Affairs. With the inclusion of the children residing on reservations under the mandate of P.L. 94-142, the U.S. Office of Education was committed to this need. It follows, then, that special education training programs operated under the aegis of EHA, Part D, make special consideration of this population.

The supply and demand problems vary depending on demographic variables such as urban/rural. Related service personnel may be more easily attracted to a major urban setting, but a sparsely populated, rural district may have trouble attracting one speech therapist at 1½ times the normal salary. However, the urban areas may demand far more diversified services and personnel. Thus, we encourage a flexible and individualized approach to assessing personnel needs.

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Finally, in view of all the previously mentioned factors, we are recommending that Congress continue its sensitivity to the personnel needs required to provide an appropriate education to all handicapped children by:

- Assuring adequate fiscal and technical assistance to states, localities, and institutions of higher education for the provision of sufficient quality special education personnel; and
- Developing a national special education job bank which would match the supply and demand needs of the special education field. This would require no new authorization, but rather could be developed through the existing EHA, Part D authority.

Special Populations

We believe yet another area which will require the strict scrutiny of the Congress is the extension of a free, appropriate public education to many children within a number of specific subpopulations of exceptional children who, for one reason or another, are not presently receiving such an education. More specifically, we would draw your attention to the following groups of children: (1) minority children; (2) inner city children; (3) children overseas; (4) adjudicated youth; (5) children enrolled in Section 6 schools; (6) American Indian children; (7) migrant children; and (8) bilingual children. Among the reasons for our failure to provide adequate services to these children are the following four, often interrelated, factors:

- Racial, Ethnic and/or Cultural Factors: The provision of a free, appropriate public education for many minority group handicapped children continues to be a problem. Historically, special education programs for mildly handicapped children had a disproportionately large minority child representation. Public policies, through litigation and legislation, improved professional practice and sensitivity, greater advocacy, and public awareness, have reduced the discrepancy, but it still exists and further

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efforts are needed. Minority children are also under-represented nationally in programs for more severely handicapped children and/or gifted and talented children, while over-represented in institutions and other public-supported custodial facilities.

- Economic Factors: Problems relating to the provision of appropriate educational services for handicapped children are further intensified in school districts of less wealth (i.e., urban centers, isolated rural areas, Indian reservations, etc.). Many of these districts are the same areas that are reported as having waiting lists for services; report lower percentages of exceptional children served; and where children more readily become wards of the state and, thus, are served by systems outside of public education.
- Labeling Factors: Many exceptional children are often denied the basic benefits they would otherwise be entitled to if they were labeled as exceptional. For example, bilingual exceptional children often do not receive bilingual education if they receive special education. Similarly, Title I programs and services are also denied to otherwise eligible exceptional children because of this classification problem.
- No Policy Factors: Finally, there are other subpopulations of exceptional children, such as those in correctional facilities, those who reside overseas, those in Section 6 schools, and those who belong to migrant families, among whom many, largely because of a lack of national policy, are not presently receiving the appropriate special education and related services they need and are entitled to.

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In summary, we bring these problems to your attention in the hope that this Subcommittee, along with other Congressional and Executive groups, can begin to systematically extend the rights and protections afforded in P.L. 94-142 to not just some, but all of the handicapped children in this country.

Related Services

P.L. 94-142 most appropriately requires the provision of both special education and related services as required in each child's individualized education program. While we would not want to in any way restrict the statutory definition, we are constrained to indicate to you that there is no small amount of confusion respecting precisely what related services should be provided. Simply put, school systems should not be required to meet every life need of a child; on the other hand, there are many appropriate and necessary related services which should be provided. We urge the Congress to instruct the U.S. Office of Education to provide ongoing clarification respecting this delicate problem.

Secondly, there continues to be (raised time and again in other testimony before the Congress) a failure in many areas of other public agencies to make their resources available to meet the mission of P.L. 94-142. The excuse is made that, since P.L. 94-142 emphasizes school system responsibility for special education and related services, other public agencies no longer need to assist, or do not need to initiate assistance. That was never the intent of the Congress, and it is a situation in urgent need of reversal. The Congress must make it clear: school system responsibility does not relieve other public agencies of resource participation where it is clearly appropriate that they should be involved. And Congress should order the federal government to provide leadership by continuing to negotiate solid agreements among federal agencies toward meeting the mission of P.L. 94-142.

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The Local Pass-through

As you are well aware, P.L. 94-142 orders that 75 percent of the monies under the Act be passed through to the local school systems. This approach was overwhelmingly endorsed by the House, which in fact went to conference in 1975 with its version of the later P.L. 94-142 carrying a 100 percent pass-through to the localities. At the same time, the Congress acknowledged the long established and vital role of the state education agencies in the provision of special education by giving the SEAs considerable flexibility in determining the final fiscal arrangements for actual use of the federal monies by the localities.

While this SEA flexibility is a useful and important mechanism, it appears to be having an affect upon the visibility of P.L. 94-142 monies at the local level. As politicians, the members of this panel are eminently well aware that, unless appropriate individuals in local areas clearly know what it means to them to fight for a given federal appropriation on an annual basis, they may not fight at all. It is also important to members of Congress, as it should be in our system of government, that the people in their home districts know precisely what their members have fought for in any given local allocation of federal money.

We therefore recommend to the Congress that the Executive Branch be required to collect and publish by LEA the LEA's child count and commensurate authorization entitlement.

Title I

We grow ever more deeply concerned at a general development of policy, primarily at the state and local level, which renders handicapped children ineligible for participation in Title I, ESEA programs, even when they otherwise meet the criteria of Title I. We know fully well that the Congress never intended that Title I-eligible handicapped children be excluded from the programmatic benefits of Title I. We, therefore, urge the Congress to reinforce the current efforts of the major interested parties to terminate this exclusion once and for all.

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Extended School Year

The court, in Armstrong v. Kline No. 78-172, (E.D. Pa., filed March 17, 1978), has ruled in favor of plaintiffs seeking an extension to the 180-day school year regulation in the State of Pennsylvania. The plaintiffs, five handicapped children and their parents, alleged that an appropriate education as required under P.L. 94-142, the Education for All Handicapped Children Act, and Section 504 of the Rehabilitation Act, may include educational programming beyond the normal school year.

The implications of this court ruling in the Commonwealth of Pennsylvania are, to say the least, considerable. As a professional advocacy organization, it always has been and always will be the position of CEC that, if a particular child or group of children must have educational programming beyond the traditional school year or otherwise place their educational development in jeopardy, CEC will fight for that extended education as a professional responsibility.

At the 1979 CEC annual convention, our delegates passed the following resolution:

Extended Year Programs for Some Exceptional Children

WHEREAS, The Council for Exceptional Children recognizes the needs of exceptional children;
WHEREAS, The Council recognizes the benefit of consistent consecutive education for some exceptional children;
WHEREAS, extended year programing is not readily available for exceptional children in most school districts or state hospitals in the U.S. and Canada;
WHEREAS, the educational, social, physical adjustment and continued growth for some exceptional children can be enhanced through extended year programs individually designed;
WHEREAS, many exceptional children are not performing to their academic potential;

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THEREFORE, BE IT RESOLVED THAT The Council for Exceptional Children support extended year programs for exceptional children in public schools, state hospitals or elsewhere:

1. If extended year programing will increase the probability of a handicapped child functioning more like a normal child, or
2. If the handicapped child is likely to suffer a significant loss of skills during the summer months.

BE IT FURTHER RESOLVED THAT The Council for Exceptional Children ask its membership to recommend extended year programing during initial placement conferences and annual placement reviews for all exceptional children who would benefit from extended year programing.

BE IT FURTHER RESOLVED THAT The Council for Exceptional Children pursue and encourage funding of such programs by individual provinces and states.

However, from a legal standpoint, CEC is not necessarily in agreement with the court that P.L. 94-142 itself necessitated the decision of the bench in the particular case of Armstrong v. Kline. We do wish to make clear that this is an issue about which the Congress will undoubtedly be hearing more, and we offer our professional assistance wherever useful.

The Individualized Education Program (IEP)

This school year marks the third year that, with confidence, we can attest to the fact that millions of handicapped children are receiving a free appropriate public education. The very cornerstone provision of P.L. 94-142, development of individualized education programs for each child, is in place in every school district in the country that provides special education.

It is important to recognize that, while some confidence exists with respect to developing IEPs at the local level, that this Congress, if it were to examine IEPs, might have difficulty in recognizing the minimal provisions

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it set forth as the framework for an IEP. We have seen many IEPs that were 2 to 3 pages in length. On the other hand, we have discovered IEPs 20 to 30 pages in length. The difficulty clearly rests in the confusion that still exists in many quarters about what an IEP is and, most importantly, what it is not.

On August 10, 1979, we submitted to the U.S. Office of Education a memorandum of essential clarification respecting the individualized education program. What follows is the essential content of that memorandum.

(1) The IEP has three purposes:

a. To link the special education and related services needs of the child to the services that must be provided. The IEP is a vehicle to look at the needs of the child and to relate them to specific services that are necessary to ameliorate the child's special educational problems.

b. The IEP defines free appropriate public education (FAPE). The law defines FAPE as an education in accordance with the child's IEP. Thus, the IEP becomes a monitoring and compliance tool to determine whether a child is receiving FAPE. In other words, if the child is receiving what the IEP sets forth, then the child is receiving FAPE and thus the law is being complied with. Particularly important is the statement in the IEP concerning the degree to which the child will participate in regular education since that determines compliance with the LRE requirements.

c. The IEP is a communication vehicle between schools, teachers, parents, and children so that all participating know what the problems are, what will be provided and what the anticipated outcome may be. In this regard, particular clarification is needed regarding participation of the child. The law requires the child participate where appropriate. This means the child should participate unless it is deemed inappropriate. The general practice, however, is that the child will not participate unless it is particularly deemed to be appropriate. In other words, the burden of proof is on participation rather than non-participation. The policy paper should indicate that it is the presumption that the child will participate unless some criteria is met to determine that such participation would be inappropriate.

(2) Given the above purposes of the IEP, it is implied that the IEP is to be developed and agreed to prior to placement. Since the IEP defines services, which include placement, it would be totally contradictory to the IEP to first place the child and then develop the IEP. In this regard, it was the intent of the legislation that the IEP would be the culmination of the identification and evaluation processes. The purpose of evaluating children should be to

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determine the levels of educational performance and unique educational needs and services needed to be provided. The IEP in a sense is a document synthesizing that information. In that regard, it was never the intent that children be placed and teachers then be given the responsibility of writing the IEP. Nowhere in the law does it even suggest that IEPs are a teacher's responsibility. Teachers were included in the IEP team to assure that input into the IEP concerning instructional matters will be made and that the IEP would be relevant to the instructional process.

(3) The IEP should be limited to matters relevant to determining what special education and related services need to be provided. Several factors are important in this regard. First, that the IEP is limited to special education and related services, not necessarily the total education of the child. General education instruction is only dealt with in general terms under the statement determining the degree to which the child will participate in general education. Second, it is important that people be reminded of the definitions of special education and related services. Special education is the specially designed instruction to meet the unique needs of the child. Related services are those services beyond special education that are necessary to support the special education. The goals and objectives in the IEP should be limited to the child's unique needs which necessitate specially designed instruction. For some handicapped children, then, the IEP will only address a very limited part of their education. (For example, for a speech handicapped child, the IEP will be limited to the speech problem). For other children, the IEP may have to cover the total of the child's education. (For example, a profoundly retarded child). Third, a great deal of confusion centers around the phrase "short-term instructional objectives." This confusion is a result of no singular interpretation of what instructional objectives mean. The term needs to be defined within the purpose of the IEP. It is our belief that short-term instructional objectives are merely the major milestones to achieving the annual goals. Since one of the purposes of the IEP is to link needs to services, then the goals and objectives, and particularly the objectives, should be things that are relevant or helpful in making decisions about the services to be provided. For example, a goal for a severely handicapped child may be to improve self-help skills. One objective would be to learn to dress himself. Learning to dress himself may tell us things that are relevant to the services to be provided. If IEPs are written to specific objectives such as "zipper-up," "zipper-down," "make big loop on shoelace," and other highly specific learning objectives, little contribution is made to service determination. Such objectives are certainly helpful to teachers in the day to day teaching activity, but it is not the intent of the IEP to meddle in such affairs.

(4) P.L. 94-142 establishes a set of national minimums. Certainly state and local school districts are free to build upon the law with additional requirements. The IEP can be larger and can serve more purposes than 94-142 specifies, however, it is important that state and local governments who may do such clarify that it is their policies that have brought about the additional requirements and not those of the federal government.

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(5) The IEP is and is not a contract. It is a contract in the sense that the services specified must be provided. If they are not provided, then the child is not receiving FAPE and thus, is denied his rights under the law. It is not a contract in the sense that the IEP provides no guarantees that the child will achieve the goals or objectives that the IEP sets forth.

(6) The IEP is the vehicle to determine FAPE, and in that regard, the services including the placement of the child. Therefore, there should be no basis for a procedural safeguard hearing regarding services or placement unless there is first a clear disagreement over the IEP. We have seen numerous instances of hearings being conducted concerning placement matters where there has been no attempt at an IEP. This is particularly prevalent in districts where IEPs are not being written until after placement. Many of these hearings could be eliminated or at least clarified if the IEP process had been first utilized.

(7) New IEPs do not have to be written annually. However, they must be reviewed or revised at least annually. Nor should it be a requirement that IEPs all be done at the beginning of the school year. School systems should be able to review and revise IEPs during the course of the school year and only do totally new IEPs as new children are referred to special education or when significant revisions in the special education for existing children are required.

It is our intention today, with respect to the provisions of the IEP, that the Congress stand firm by not changing its original IEP requirement, but that it offer guidance and clarification. In support of this position, we would like to quote selected conclusions of an IEP study completed by Stanford Research Institute last year. They recommended:

> The first technique used by the Federal government to address various IEP problems, however, probably should be guidance and technical assistance. Too rapid changes in regulations can often compound problems of implementation. Many fears result more from misunderstandings or confusion over what is expected than from the legal requirements themselves. Similarly, specific problems encountered, such as those surrounding the content of IEPs, are exacerbated by a lack of understanding of the terms and of the role of IEPs vis-a-vis accountability and compliance. To the extent that the Federal government can assist in clarification of the requirements for both state and local staff, the implementation of P.L. 94-142 will be facilitated.

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American Indian and Alaska Native Handicapped Children

Under P.L. 94-142, American Indian and Alaska Native handicapped children are to be provided appropriate educational opportunities regardless of whether these children and youth attend public, Bureau of Indian Affairs (BIA) operated or tribally operated schools under contract with BIA. In this regard, the Act allows the Secretary of the Interior to receive up to one percent of the aggregate amount available to the states for the "education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior."

Similar to the states, BIA was to be affording all handicapped children ages 3 to 18 within its school jurisdiction a free appropriate public education as of September 1, 1978. However, despite steady progress in special education service delivery, i.e., the realization of special education line-item funding, establishment of a permanent special education administrative staff at the Central Office, employment of much needed special education staff, and the formation of an Advisory Committee for Exceptional Children, reports and other information continue to call attention to the fact that handicapped children served by BIA are still not receiving all the special education and related services to which they are entitled under P.L. 94-142. For example:

- The U.S. General Accounting Office (GAO) report, The Bureau of Indian Affairs is Slow in Providing Special Education Services to All Handicapped Indian Children (CED-79-121), noted that in two of the three largest area offices, BIA was providing special education and related services to only 38 percent of the identified handicapped students, despite a full service mandate. Secondly, the report indicated that in some instances funding for the handicapped had been diverted for purposes other than special education, and finally, the GAO underscored

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the continued need for operating rules and regulations.

- More recently, in carrying out its administrative responsibilities under P.L. 94-142, the Bureau of Education for the Handicapped (BEH) site-visited several BIA education programs as part of a Program Administrative Review in the State of Alaska. While indicating that substantial progress had been made in the employment of BIA special education personnel in Alaska, BEH noted child identification and the provision of special education and related services as areas which "require corrective action if the BIA's continued..." funding under P.L. 94-142 "...is not to be jeopardized."

While P.L. 94-142 places the responsibility for the education of all handicapped children with the states and their political subdivisions, the inclusion of the Secretary of the Interior has raised many questions about who has responsibility to provide services to Indian handicapped children on reservations and in Alaska Native villages. This issue becomes particularly troublesome in states such as Alaska, Arizona, New Mexico, North Dakota, South Dakota, and Oklahoma, as well as other states where public, BIA and tribal or Indian community controlled schools coexist. A means of overcoming the danger of Indian handicapped children falling through service delivery gaps is the development of written agreements specifying the respective educational responsibilities of states and BIA. While the need for such agreements can be seen most readily in state and Bureau of Indian Affairs child identification activities, problems can also arise during placement, particularly when Indian handicapped children are placed in state institutions or private facilities. Despite the need to clarify respective responsibilities, it is our understanding that there are only four such written agreements in existence.

As previously noted, the preservice training of qualified Indian and Alaska Native special education and related services personnel remains a problem. While

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the BEH Office of Indian Education, USOE, and BIA are involved in the preparation of education personnel, we find that there is far too little coordination between these agencies in terms of coordination, particularly as it relates to the preparation of qualified Indian educators and support personnel to work with Indian handicapped children. The requirements of P.L. 94-142 and the basic federal policies of Indian self-determination and Indian preference in employment and training provide the impetus for the federal government to exert strong leadership in this area. In our view, without this emphasis, the mandate to provide an appropriate education to Indian handicapped children will not be met in the foreseeable future.

In view of these problems, we are offering the following recommendations in the hope that the Committee, along with other Congressional Committees and Executive Agencies, can provide the oversight necessary to insure that Indian and Alaska Native handicapped children are provided a full and appropriate education.

- That the Assistant Secretary for Indian Affairs promulgate special education rules and regulations prior to the beginning of the 1980-81 school year. In our estimation, many of the program difficulties inhibiting specialized services to Indian exceptional children served by BIA schools, as well as tribal schools under contract with BIA, could be corrected through the adoption of special education rules and regulations. In contrast to state education agencies, BIA has continued to attempt to administer complex special education programs and services in the absence of written regulations. While such a situation most certainly serves the interests of the agency, there is no way that handicapped students, parents, and advocates can possibly hold the system accountable.
- That the Annual Program Plans submitted by the states in which there are BIA operated and/or tribal schools under contract with BIA as well as the BIA Annual Program Plan, contain finalized written agreements specifying each respective agency's educational responsibilities with

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respect to Indian handicapped children on and near reservations and in Alaska Native villages.

- As previously mentioned, we believe that special education training programs under the aegis of EHA, Part D, made special consideration of the need to prepare Indian and Alaska Native special education and related services personnel.
- That the BEH, BIA and Office of Indian Education develop and implement a personnel development plan that will increase the number of Indian and Alaska Native special education and related services personnel. At a minimum, we expect that such a plan would be reflected in the BIA Annual Program Plan, as well as in funding priorities for BEH and the Office of Indian Education.
- That the Committee encourage BEH and the new National Institute for Handicapped Research to provide much needed information on the special needs of Indian and Alaska Native handicapped children and youth.
- That the Committee consider the eligibility of BIA for other program funds administered by BEH. Most notable are personnel preparation, research, model and demonstration programs, as well as the programs for the education of handicapped children in state operated or supported schools (P.L. 89-313).

Further, since BIA does not have the equivalent of a "state legislature" or "state board of education", the Committee must assume direct oversight, and in this regard, we encourage the Committee to hold periodic hearings on these as well as other matters.

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POLICY ISSUES FOR EXCEPTIONAL PERSONS

Early Childhood Education

The preschool incentive grant under P.L. 94-142 is one of the few examples of federal initiatives targeted for preventative measures. Persons concerned about handicapped children have long concurred on the critical importance of early developmental programs for such children. It has been stated that as much as 50% of all intellectual development occurs prior to age four (Bloom, 1964). The best evidence clearly demonstrates that with appropriate early intervention, some handicapping conditions are reversible, some handicapping conditions are susceptible to a high degree of amelioration and, in some instances, the multiplying consequences of a disability can be sharply curtailed. Thus, to provide services as early as possible to the very young handicapped child and his family decreases the need for later costly remedial and maintenance programs while increasing the probability of self-sufficiency.

In a report entitled The Economics of Mental Retardation, Ronald Conley stated,

> A more stimulating environment (could enable) over half of the retarded to achieve I.Q. scores above the arbitrary cut off point (for mild retardation).

According to Conley, the economic loss due solely to lowered I.Q. attributed to environmental conditions may be quite significant. Secondly, early childhood specialist Betty Caldwell has concluded that:

> Differences on most cognitive variables can be demonstrated as a function of an early childhood spent in environments presumed to differ in the amount and quality of available stimulation.

In essence, the earlier a handicapped child obtains stimulating, developmentally appropriate experiences, the greater his chance of participating in the larger society. Results from a well-known longitudinal program have recently

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been published establishing not only the beneficial effects on children but also the cost/benefits of early programs. The Ypsilanti Preschool Project has been providing preschool to handicapped children for over 10 years. In a follow-up study, the following was reported:

- Large cognitive gains were maintained five years after the children entered elementary school.
- Later, grade retention or placement in special education classes for the children who had attended the preschool project was only one-half that of a comparable group.
- Home visits in addition to the regular preschool program had significantly greater benefits.
- The project costs were recovered by the reduced costly special education placements required later and higher projected lifetime earnings.

It is conservatively estimated that there are one million handicapped children of preschool age (0 to 5). Approximately only 350,000 are receiving some form of early childhood educational services from either public and/or private sources. This leaves approximately 65 percent of the preschool handicapped children without needed services.

The federal commitment to the efficacy and cost benefit of intervening into the lives of handicapped children as early as possible was reflected in Congressional action over a decade ago with the passage of the Handicapped Children's Early Education Assistance Act (P.L. 90-538). This program sought to provide an incentive to states by developing and funding demonstration projects which, the intent was, would be continued eventually by the states and localities.

The next major federal effort to encourage states to begin providing early intervention programs is found in the Preschool Incentive Program of P.L. 94-142. Every state and their localities, under the terms of P.L. 94-142, are required

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to make available special education and related services to handicapped children aged three to eighteen by September 1, 1978, and three to twenty-one by September 1, 1980. However, this mandate does not apply for children in the three to five and eighteen to twenty-one age ranges if the requirement is inconsistent with state policies. The original versions of P.L. 94-142 were amended to allow state option for the 3 to 5 year population.

The decision was then made to "buy" what we will not "mandate" through inclusion in P.L. 94-142 of the preschool incentive grant program. The incentive grant component is aimed at encouraging the states to provide special education and related services to its preschool handicapped children. Each handicapped preschooler aged three to five who is counted as served was to generate a special $300 entitlement, to be used by state education agencies to further develop preschool programs for handicapped children. However, this figure has never been realized; in fact, only about one third of that amount is being received.

In 1979, states reported providing special education and related services under P.L. 94-142 to 215,637 handicapped children aged 3-5 years. If the states expand their services to only an additional 4,400 children, they will require $66 million under the authorized formula: $300 times the number of children served. From 1978 to 1979, states, in fact, increased the number of serviced preschoolers by over 15,000.

In 1979, the national average per pupil expenditure for school-age students was approximately $1750, thus the $300 incentive is but a very small portion of the necessary revenue to serve preschool handicapped. However, at the proposed figure of $25 million, the per pupil "incentive" is less than $100 per child. Few states, who are not already mandated to serve the 3-5 age child, find the $100 per child grant sufficient to change their policies.

By removing the mandate and creating the incentive grant program in conjunction with a failure to appropriate the authorized level of funds for that

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program, we have created the worst of both worlds. States with permissive or no early childhood policies are not focusing on preschool handicapped children. We are seeing the momentum of the late 60's and early 70's in this area come to a grinding halt. Fewer states are lowering their service ages to 3 or 4, and fewer still are appropriating necessary funds.

Educational programs for the preschool handicapped child are mandated in only about eleven states. Where there were voluntary programs, funds are running thin and programs are folding. It is absolutely essential to reinstate the original Congressional commitment to the very young handicapped child and to his future which would be greatly enhanced by preschool experiences. We must supply the leadership as well as fiscal resources necessary to maintain the momentum that was obtained by a long and hard battle.

To this end, we offer the following recommendations, which are in keeping with the fact that of the testimonies heard, and of the problems raised, preschool is clearly an issue where federal action is sought: (The first two recommendations were also presented in our child count segment)

- Amend the statute by allowing states to count all handicapped children who are receiving an appropriate special education, aged 0 to 21 rather than only those children aged 3 to 21.
- Amend the preschool incentive statute by providing an allocation of $300.00 times the number of children aged 0 to 5 counted as served, rather than the 3 to 5 age group now eligible for the $300.00 incentive grant.
- Amend the statute by providing that a free appropriate public education shall be available to all eligible handicapped children who require special education aged 0 to 5 through a phase-in procedure.

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Finally, Congress must meet the intent of its current as well as these recommended policies by fully appropriating monies for the preschool incentive program at an estimated $66 million and by seeing that monies in both personnel preparation and the research and development components of the Act (Part D & E, EHA) are earmarked for early childhood efforts. Such fiscal commitment will help to ensure that providing early education to very young handicapped children is not a further burden upon the states and localities, but rather a cost-beneficial investment in the future.

Gifted and Talented Education

The 95th Congress recognized the pressing special education needs of America's estimated 2.5 to 3 million gifted and talented children when it legislatively moved this program out of the Special Projects Act (Title IV, Section 404 of P.L. 93-380) to enable it to become a free standing act under Title IX of the Education Amendments of 1978. Congressional commitment to the gifted and talented was further demonstrated through the increase in the level of authorization it provided for this population (e.g., from $12.5 million in FY 78 to $50 million in FY 82).

While there has been significant activity by the federal government as well as state and local governments and agencies with respect to an increased awareness of the gifted and talented, much remains to be done. For example, only forty percent of the gifted and talented children in this country, based upon very conservative estimates, are presently receiving any special education. Further, only fourteen states, in a nationwide investigation conducted by The Council for Exceptional Children, reported serving forty percent or more of their gifted and talented children. Likewise, studies continue to demonstrate the high degree of boredom, underachievement, underaspiration, academic failure, and the severe drop-out rate associated with the gifted and talented.

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With respect to these problems and this most important population, therefore, The Council for Exceptional Children sees the need for the following actions in particular:

(1) Increased Federal Appropriations: As was previously mentioned, The Gifted and Talented Children's Act of 1978, as promulgated by the 95th Congress, called for a considerable increase in federal expenditures for this population. While the respective Appropriation Committee's did provide a modest increase in the entitlement for the gifted and talented last year (i.e., from $3.78 million to $6.28 million) it is considerably less than the $30 million figure requested for this act by the authorizing Committee's. We would, therefore, strongly urge the members of this Committee to actively support the provision of a much larger federal appropriation for these children in fiscal year 1981 when the authorization level for this act reaches $35 million. In this respect, we would hope that such an increase would help to provide the federal leadership that is so desperately needed in this area.

(2) The Extension of the Exceptional Child Concept: As stated in its previous testimony before the House and Senate in 1977, The Council for Exceptional Children remains firmly committed to the inclusion of gifted and talented children within the exceptional child concept. It should be recalled that historically the majority of special educators have used the term exceptional in referring to all children with special needs (both gifted as well as handicapped) and likewise, as practitioners, have perceived themselves as belonging to a profession committed to the education of all exceptional children. In addition, there are presently 28 states that administratively house their gifted and talented educational programs

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within their state-level Special or Exceptional Education Units or Divisions. Out of the 13 leading states in providing state appropriations for the gifted and talented, 10 administer these programs under special education. Finally, we would point to the relationship of the new definition of gifted and talented children prescribed in The Gifted and Talented Children's Education Act of 1978 and that of handicapped under the Education of the Handicapped Act. Both use the phrase "who by reason thereof" and imply that there are two germane factors for the identification and provision of services for these children. First, that the children have a unique personal or learning characteristic (i.e., they are handicapped and/or gifted and talented); and second, and as equally important is the fact that because of this characteristic, they require special education to meet their unique educational needs.

(3) Increased Rights and Potection: Recent studies by the U.S. Office of Gifted and Talented (OGT) have further illustrated many of the problems encountered with the identification of gifted and talented children. For example, according to OGT,

> We have some data reported to us just recently by one of the States. They cross-referenced the children that were being referred to the emotionally disturbed program and they found that 50 percent of the children who were being referred to the emotionally disturbed program were indeed their gifted youngsters . . . . The very characteristics of gifted children are being perceived as deviant--the curious, in some cases the hyperactive, the divergent thinking, the kinds of things that do not fall into the regular pattern.

A second, equally distressing piece of information discovered by OGT was that many of the children who were labeled as learning disabled were likewise gifted.

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Largely because of these and many other problems associated with the identification and provision of special education to meet the unique needs of this population, CEC strongly believes that all of the rights and protections afforded to handicapped children under P.L. 94-142 should likewise be afforded to gifted and talented children as well.

Handicapped Youth and Adults

There is growing concern about the continuing educational needs of exceptional persons beyond completion of a traditional elementary and secondary education. It is recognized that some exceptional persons will still require specially designed basic education beyond the age limits usually established for public education. Some states have extended the age ranges for some exceptional persons. Little attention has been given to the role of special education in the adult education/system. Further, exceptional persons have life long learning or continuing educational needs, as do all adults, beyond basic education. Increasingly, communities are providing such opportunities to the general public, with little regard for the special educational needs of exceptional persons. Moreover, the whole issue of effective transfer into the "world of work" still requires comprehensive national attention and action.

Through P.L. 94-142 a national policy base has clearly been put permanently in place in the realm of public elementary and secondary education, though much remains to be done at the secondary level. Moreover, some progress becomes gradually discernable within the vocational education systems. But for all practical purposes, no policy base of any significance has as yet been established by the Congress on behalf of handicapped Americans in the following federal activities:

- adult education;
- career education and lifelong learning;
- continuing education; and
- CETA and other job training programs.

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We do not intend to elaborate at any length on this issue at this time. We do wish, however, to advise the Congress that the problems in the education and training of handicapped youth and adults have become a major concern of the membership of The Council for Exceptional Children. We urge this panel and other appropriate panels of the House Education and Labor Committee to commit themselves to a full review and consequent legislative action in this area. We are ready to assist in every way possible.

Conclusion to Testimony

Approximately three years ago, when implementation of P.L. 94-142 was commencing, we appeared before this panel and concluded our testimony with the following comment:

> Mr. Chairman, P.L. 94-142, the Education for All Handicapped Children Act, is a good Act, unusually well thought out over a long period of time. It has withstood, and will continue to withstand, the test of both positively inspired and negatively inspired criticism.

We stand by that statement today. And we reiterate at the same time that no law is written in stone. P.L. 94-142 should certainly be open to fine tuning through whatever federal vehicles are appropriate.

A final note, Mr. Chairman. We must not let a national commitment to the quality of education slip through our hands in the rush to meet immediate compliance needs. We observed with some concern as reported in an issue of Education Daily recently that the top training priority of the states for this school year is in the area of procedural safeguards. In the justifiable zeal to comply with P.L. 94-142 we have redirected resources from instruction to the process of special education. Thus, funds that taught teachers new teaching techniques are now training people to testify at a hearing. State consultants who worried about improving instruction or curriculum are now compliance officers. Federal research efforts to link new technology to improved practice are now evaluating

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the processes of the system. The issue is not process versus instruction, but rather the need for governmental leadership and resources to attend to both with equal ferver.

Mr. Chairman, we again thank you for the opportunity given the Council to appear today on behalf of exceptional Americans. In closing, may we simply reiterate that we stand prepared to make the full resources of The Council for Exceptional Children available to this Subcommittee as it fulfills its legislative charge.

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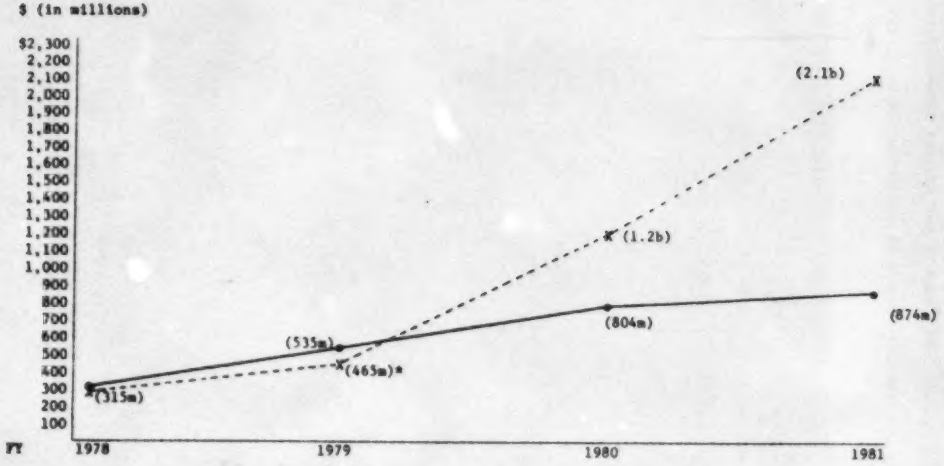
P.L. 94-142 AUTHORIZATIONS AND APPROPRIATIONS

Attachment 1



*70 million carry-over from FY 78.

Attachment 2 *Supplement*

NUMBER OF HANDICAPPED CHILDREN SERVED AND FISCAL YEAR ALLOCATION UNDER P.L. 94-142, BY STATE
Part B State Grants

State	Children Served in School Year 1977-78 (Ages 3-21)	Fiscal 1979 Allocation (1978-79 School Year)	Children Served in School Year 1978-79 (Ages 3-21)	Fiscal 1980 Allocation (1979-80 School Year)
NATIONAL TOTAL	**3,864,894**	**$563,874,752**	**3,788,718**	**$804,000,000**
Alabama	58,934	$ 9,198,597	68,420	$ 14,638,340
Alaska	7,310	1,141,081	6,985	1,496,568
Arizona	40,477	6,318,480	44,313	9,480,889
Arkansas	30,896	4,821,148	36,508	7,810,823
California	319,624	49,893,306	330,021	70,607,420
Colorado	41,412	6,464,413	43,049	9,210,259
Connecticut	57,998	9,053,317	58,932	12,608,396
Delaware	12,188	1,899,113	11,164	2,388,518
District of Columbia	2,874	868,848	4,156	889,189
Florida	119,166	18,598,203	121,308	25,946,473
Georgia	84,302	13,158,542	95,338	20,379,400
Hawaii	10,177	1,588,630	10,063	2,152,981
Idaho	16,853	2,630,753	16,995	3,636,061
Illinois	215,089	33,570,710	215,679	46,144,147
Indiana	79,080	12,344,388	90,442	19,349,909
Iowa	51,380	8,020,418	55,559	11,886,752
Kansas	33,443	5,220,452	36,606	7,831,628
Kentucky	56,718	8,853,080	60,375	12,917,126
Louisiana	82,080	12,808,988	81,392	18,687,367
Maine	19,818	3,093,590	22,779	4,962,830
Maryland	83,410	13,020,301	84,421	18,061,726
Massachusetts	122,382	19,103,830	126,820	27,132,919
Michigan	142,125	22,188,712	144,516	30,918,947
Minnesota	72,912	11,381,963	77,944	16,675,963
Mississippi	30,984	4,836,602	37,875	8,103,790
Missouri	88,770	13,544,797	96,104	20,561,284
Montana	9,961	1,563,361	12,017	2,571,018
Nebraska	26,858	4,192,534	30,684	6,580,510
Nevada	10,157	1,585,508	10,624	2,272,986
New Hampshire	9,038	1,410,832	9,409	2,013,039
New Jersey	142,121	22,188,088	144,424	30,898,264
New Mexico	16,112	2,515,083	18,694	3,998,549
New York	215,189	33,590,847	189,827	40,613,157
North Carolina	91,486	14,280,586	102,413	21,911,082
North Dakota	8,680	1,353,231	9,262	1,981,589
Ohio	162,916	25,431,188	177,779	38,036,508
Oklahoma	48,230	7,528,703	55,874	11,954,146
Oregon	32,484	5,070,752	37,014	7,919,081
Pennsylvania	168,502	26,303,182	171,609	36,715,448
Rhode Island	13,098	2,044,598	13,454	2,878,480
South Carolina	68,984	10,768,402	68,502	14,656,684
South Dakota	8,418	1,314,060	8,915	1,907,349
Tennessee	94,608	14,768,308	107,287	22,953,867
Texas	266,666	41,631,568	257,576	56,107,838
Utah	35,144	5,485,978	34,157	7,307,831
Vermont	5,410	844,801	9,879	2,113,686
Virginia	76,018	12,176,610	83,641	17,937,636
Washington	48,186	7,518,966	49,040	10,492,023
West Virginia	28,826	4,500,105	30,297	6,481,991
Wisconsin	56,106	8,772,508	57,813	12,368,991
Wyoming	7,446	1,162,321	8,726	1,866,913
American Samoa	208	498,910	240	498,032
Bur. of Indian Affairs	3,998	5,582,918	4,880	7,960,368
Guam	3,730	1,299,839	2,248	1,384,125
Northern Marianas*	17	167,523	0	182,600
Puerto Rico	13,907	2,898,084	18,452	3,947,773
Trust Territory	1,242	1,297,586	1,480	1,414,389
Virgin Islands	565	808,142	886	880,874

*Although Northern Marianas applies separately for a Part B grant, its child count is included with the count for the Trust Territories.
Note: Allocations for fiscal 1979 are based on the number of children served in school year 1977-78 and the fiscal 1980 allocation is based on children served in the 1978-79 school year.
Figures from the U.S. Office of Education as reported in *Education Daily*, August 3, 1979.

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NATIONAL SUMMARY

REPORT OF HANDICAPPED CHILDREN RECEIVING SPECIAL EDUCATION AND RELATED SERVICES
AS REPORTED BY STATE AGENCIES UNDER P.L. 94-142 AND P.L. 89-313
SCHOOL YEAR 1978-1979

08/18/79

	P.L. 94-142					P.L. 89-313				CUMBINED		
	AGES 3-5	AGES 6-17	AGES 18-21	TOTAL	% PUP.	STATE	LOCAL	TOTAL	% PUP.	TOTAL	% PUP.	% HDCPD.
MENTALLY RETARDED	39,588	728,991	53,316	821,375	1.60	96,171	18,089	114,260	0.22	935,635	1.83	23.2
HARD OF HEARING	3,691	33,478	1,370	38,289	0.07	3,983	509	3,592	0.00	41,881	0.08	1.0
DEAF	2,189	17,448	860	20,597	0.04	22,891	1,093	23,884	0.04	44,481	0.08	1.1
SPEECH IMPAIRED	143,788	1,057,257	7,786	1,208,809	2.41	4,833	1,352	6,185	0.01	1,214,994	2.42	30.8
VISUALLY HANDICAPPED	1,728	20,356	885	22,969	0.04	9,001	550	9,611	0.01	32,570	0.06	0.8
EMOTIONALLY DISTURBED	6,733	255,408	7,288	269,529	0.53	26,670	4,859	31,729	0.06	301,258	0.60	7.6
ORTHOPEDICALLY IMPAIRED	7,679	52,771	3,329	63,578	0.12	6,506	1,488	7,986	0.01	71,480	0.14	1.8
OTHER HEALTH IMPAIRED	5,899	93,846	2,960	101,465	0.20	3,391	764	4,155	0.00	105,620	0.21	2.6
LEARNING DISABLED	28,488	1,098,134	22,605	1,181,141	2.28	18,581	2,708	13,289	0.02	1,154,430	2.30	29.3
DEAF-BLIND	265	1,288	58	1,523	0.00	718	107	825	0.00	2,348	0.00	0.0
MULTI-HANDICAPPED	5,013	32,859	2,100	40,372	0.08	7,926	2,118	10,044	0.02	50,416	0.10	1.2
TOTAL	215,621	3,391,978	102,948	3,709,639	7.41	191,941	33,539	225,480	0.45	3,935,119	7.86	100.0

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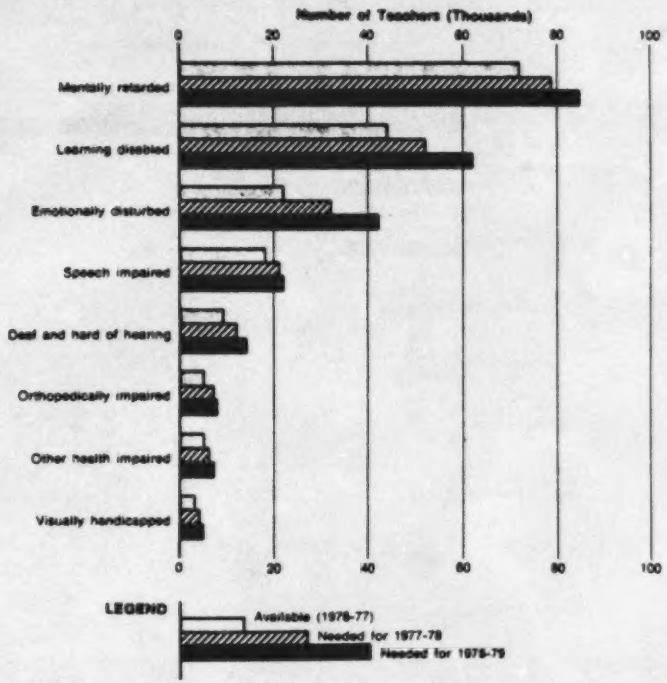
Attachment 3

Attachment 4

See Appendix D, Table D-3.4

Figure 3.4 **Special Education Teachers Available and Needed by Type of Handicapping Condition of Child Served[1]**



[1]Some States combined categories. See Appendix D, Table D-3.4.

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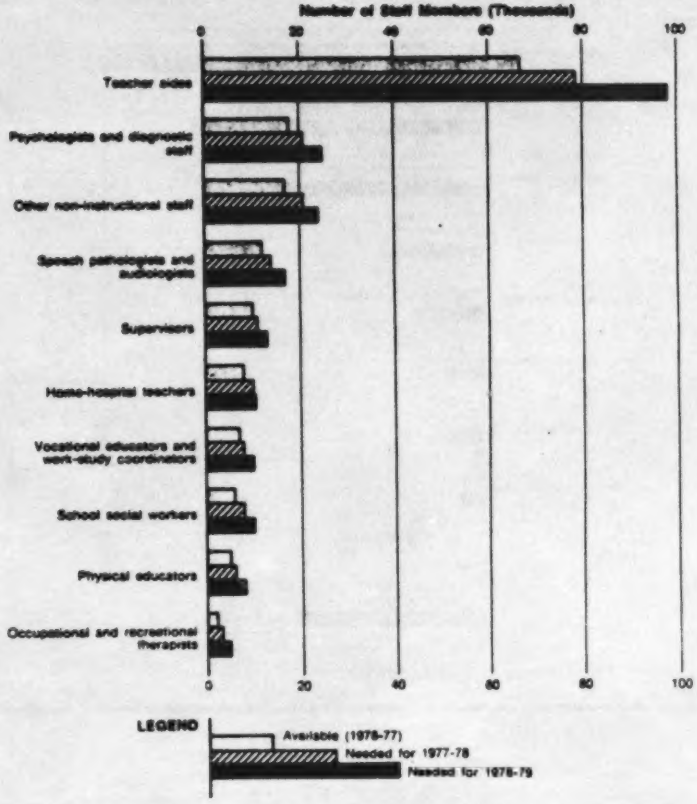
See Appendix D, Table D-3.5

Figure 3.5 School Staff Other Than Special Education Teachers Available and Needed[1]



[1]Some States combined categories. See Appendix D, Table D-3.5.

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Attachment 6

TABLE D-3.4
Special Education Teachers' Available and Needed by Type of Handicapping Condition of Child Served, School Years 1976-77 to 1978-79

State	Mentally Retarded			Learning Disabled			Emotionally Disturbed		
	Teachers Available 1976-77	Teachers Needed 1977-78	Teachers Needed 1978-79	Teachers Available 1976-77	Teachers Needed 1977-78	Teachers Needed 1978-79	Teachers Available 1976-77	Teachers Needed 1977-78	Teachers Needed 1978-79
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total	19,389	20,944	22,254	8,197	11,791	13,708	5,341	6,377	7,314

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Attachment 7

TABLE D-3.4 (Continued)
Special Education Teachers Available and Needed by Type of Handicapping Condition of Child Served, School Years 1976-77 to 1978-79

State	Speech Impaired*			Deaf / Hard of Hearing			Orthopedically Impaired		
	Teachers Available 1976-77	Teachers Needed 1977-78	Teachers Needed 1978-79	Teachers Available 1976-77	Teachers Needed 1977-78	Teachers Needed 1978-79	Teachers Available 1976-77	Teachers Needed 1977-78	Teachers Needed 1978-79
Alabama	2 475	2 675	3 132	314	723	837	76	476	568
Alaska	111	163	206	279	378	413	30	86	141
Arizona	1 026	1 077	1 133	1 083	1 175	1 258	440	467	491
Arkansas	813	823	883	228	411	430	27	42	61
California	3 210	3 258	3 386	4 933	5 321	5 963	2 364	2 511	2 632
Colorado*	880	839	833	1 299	1 219	1 284	387	443	481
Connecticut	1 187	1 443	1 699	1 337	1 562	1 787	966	1 014	1 134
Delaware	213	221	301	320	359	575	171	186	256
District of Columbia	275	397	736	132	458	421	107	212	287
Florida	2 781	3 891	5 365	1 529	1 654	1 867	833	1 280	1 271
Georgia	2 319	2 762	2 402	835	900	1 078	561	581	813
Hawaii	178	187	192	293	303	309	34	37	40
Idaho	203	226	228	373	397	412	46	56	63
Illinois*	4 104	4 013	4 913	2 883	3 254	3 254	2 572	6 769	6 769
Indiana	1 987	3 252	3 252	279	982	982	184	2 769	2 769
Iowa	1 734	1 428	1 601	1 038	1 273	1 710	201	438	1 254
Kansas	789	829	854	559	625	667	229	273	482
Kentucky	1 681	1 734	1 774	635	744	901	165	228	288
Louisiana	1 853	1 937	2 083	764	983	1 288	209	399	684
Maine	219	383	426	176	273	36	26	656	126
Maryland	1 349	1 382	1 421	1 711	1 868	1 861	271	372	391
Massachusetts	1 609	1 825	1 898	1 065	1 144	1 190	1 086	1 232	1 310
Michigan	3 382	3 314	3 265	1 258	1 591	2 013	1 355	1 440	1 520
Minnesota	1 679	1 730	1 755	1 905	1 940	1 978	360	395	330
Mississippi	1 295	1 331	1 657	272	370	758	6	226	918
Missouri	1 923	2 084	2 131	1 044	2 184	2 471	491	588	667
Montana	248	285	331	442	513	585	49	57	66
Nebraska	726	748	788	227	247	257	126	136	146
Nevada	139	—	95	254	—	51	23	—	19
New Hampshire	181	202	226	181	202	226	172	193	212
New Jersey	1 436	1 554	1 597	1 231	1 514	1 526	950	1 066	1 072
New Mexico	—	—	—	—	—	—	—	—	—
New York	4 195	4 286	4 555	2 398	2 732	3 333	3 230	3 648	3 148
North Carolina	3 043	2 853	2 863	419	548	645	229	629	726
North Dakota	194	200	208	129	137	157	16	24	36
Ohio	4 070	4 150	4 467	1 636	1 821	2 177	210	260	444
Oklahoma	894	989	1 064	836	940	1 084	27	37	46
Oregon	404	443	487	729	807	845	102	150	149
Pennsylvania*	5 182	6 216	5 894	1 367	1 751	4 787	1 080	1 083	5 883
Puerto Rico	508	648	830	31	87	143	20	92	167
Rhode Island	180	200	215	195	247	262	92	117	122
South Carolina	1 929	2 486	2 500	468	640	640	248	327	327
South Dakota	186	202	206	139	199	213	25	33	35
Tennessee	1 465	2 000	2 120	1 640	1 640	1 700	255	465	540
Texas*	1 934	2 109	2 454	1 678	1 978	2 153	399	539	629
Utah	148	177	197	10	35	16	49	72	116
Vermont	106	134	153	41	65	65	26	43	43
Virginia	1 648	1 765	1 930	954	1 160	1 265	754	349	384
Washington*	479	608	1 027	511	513	543	165	378	384
West Virginia	892	875	1 149	272	539	647	57	91	148
Wisconsin	1 771	1 783	1 862	1 245	1 344	1 544	564	710	910
Wyoming	138	145	140	227	231	219	39	48	99
American Samoa	0	0	0	2	8	14	0	0	0
Guam	44	52	52	6	16	16	0	7	7
Trust Territories	4	21	13	4	8	12	9	16	24
Virgin Islands	46	62	56	7	12	24	4	8	32
Bur. of Indian Affairs	60	74	168	47	72	74	10	34	87
Total	71 679	79 491	85 097	43 998	52 234	61 586	21 797	32 900	42 078

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Attachment 8

TABLE D-3.4 (Continued)
Special Education Teachers Available and Needed by Type of Handicapping Condition of Child Served, School Years 1976-77 to 1978-79

State	Other Health Impaired			Visually Handicapped		
	Teachers Available 1976-77	Teachers Needed 1977-78	Teachers Needed 1978-79	Teachers Available 1976-77	Teachers Needed 1977-78	Teachers Needed 1978-79
Alabama	81	170	197	4	50	64
Alaska	6	21	16	5	9	17
Arizona	1	1	1	108	108	112
Arkansas	30	30	30	43	45	46
California	411	473	566	456	436	461
Colorado	–	–	–	63	65	68
Connecticut	30	46	46	90	93	117
Delaware	1	2	3	12	10	14
District of Columbia	21	32	34	30	32	34
Florida	285	316	351	169	174	179
Georgia	152	160	175	85	95	114
Hawaii	10	–	–	5	5	10
Idaho	30	30	30	54	52	52
Illinois	–	–	–	188	237	273
Indiana	160	436	436	77	285	285
Iowa	96	96	120	66	97	116
Kansas	26	43	52	46	44	56
Kentucky	153	156	238	61	77	93
Louisiana	127	132	217	98	82	113
Maine	–	12	–	–	24	15
Maryland	30	12	30	92	78	88
Massachusetts	130	150	153	150	150	174
Michigan	150	164	133	130	137	137
Minnesota	150	139	140	62	58	78
Mississippi	–	68	215	32	44	75
Missouri	0	0	4	30	30	44
Montana	1	1	1	1	1	1
Nebraska	0	0	0	30	30	30
Nevada	30	–	30	6	–	6
New Hampshire	131	146	164	30	32	36
New Jersey	343	388	387	113	116	117
New Mexico	–	–	–	–	–	–
New York	1 000	1 500	1 613	300	300	643
North Carolina	41	179	186	63	138	168
North Dakota	0	0	0	2	4	4
Ohio	85	136	186	116	134	186
Oklahoma	0	0	0	30	30	30
Oregon	24	30	34	30	30	30
Pennsylvania	–	–	–	190	314	65
Puerto Rico	21	33	66	7	30	70
Rhode Island	0	0	0	7	7	7
South Carolina	124	168	168	96	111	88
South Dakota	2	2	2	13	17	18
Tennessee	270	300	340	141	196	200
Texas	–	–	–	64	88	139
Utah	14	97	60	1	3	1
Vermont	5	5	5	61	61	61
Virginia	11	4	4	54	66	71
Washington	5	5	5	10	19	19
West Virginia	90	91	105	33	38	42
Wisconsin	34	34	79	80	83	87
Wyoming	4	6	9	3	3	3
American Samoa	1	1	1	2	2	2
Guam	0	0	0	4	4	4
Trust Territories	9	8	11	4	8	12
Virgin Islands	0	2	4	2	2	8
Bur. of Indian Affairs	–	21	38	1	16	36
Total	4 977	5 895	6 660	3 487	4 317	4 746

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Attachment 9

NOTES TO TABLE D-3.4

SOURCE: Tables 2A, B, and C of State Annual Program Plans for FY 1978. A dash generally indicates that the data were not available to the States.

1. Includes regular, special and itinerant/consulting teachers.

2. Colorado, Illinois, Pennsylvania and Texas each reported a combined count for teachers of the orthopedically impaired and other health impaired. Mississippi similarly reported a combined count only for available teachers. The counts are shown in the orthopedically impaired column; dashes are placed in the other health impaired column. In Illinois, the count of teachers needed for 1977-78 for the hard of hearing includes audiologists.

3. Washington reported a combined count of teachers for the speech impaired and teachers for the learning disabled. The count is shown in the teachers for the learning disabled column; a dash is placed in the speech impaired column.

4. Eleven States reported only combined counts of teachers for the speech impaired and speech pathologists. In Florida, Georgia, Illinois, Indiana, Kansas, Missouri and Tennessee, the counts were reported under teachers of the speech impaired and are displayed in this table. In Connecticut, Louisiana, Ohio, and Pennsylvania, the counts were reported under speech pathologists and are displayed in Table D-3.5.

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Senator STAFFORD. In the course of testimony, it has been noted that written agreements can facilitate the provision of special education services to handicapped Indian children and prevent them from "falling through the cracks", and then your testimony indicates there are only four such agreements.

Could you tell us now or for the record which the four States are?

Mr. RAMERIZ. The four States, as far as we can determine from the Bureau of Indian Affairs, are Oklahoma, North Dakota, Montana, and Wyoming.

Senator STAFFORD. Thank you very much.

Dr. Wyatt, did you want to summarize?

Dr. WYATT. Yes, I would like to just summarize our statement. If I could call attention to at least three, I think, basic policy issues that are very closely related to the problems that we have with 94-142, but are perhaps not as directly addressed.

The first of these that I would like to bring to your attention is the whole question of early childhood education. We have known for a number of years that there was very high positive impact of early intervention on the handicapped. That has been well-documented by any number of studies that I could cite for you.

We have estimates by people like Bruner and Knapp that perhaps 50 percent of the intellectual development of a child occurs before the age of 4.

There is enough evidence to indicate that some of the handicapping conditions could be either avoided or reduced if they in fact had gotten the early intervention that they needed at the time that it was most critical.

The handicapped frequently, due to their very limitations, often have less environmental stimulation than do normal children, and for that reason, the provision of some kind of early intervention becomes even more critical for this group of people.

There is, in fact, a valid theoretical concept called the "critical period concept," which would hold that perhaps if you do not get the proper kinds of stimulation to the individual within a certain period of time, you may never be able to remediate the situation as it should be.

So we are concerned that if we were able to do this, that economically, the cost-effectiveness of providing early intervention may in fact be very high and might have evidence that it could in fact pay for itself.

Unfortunately, the programs in early childhood have been very slow in developing. Our estimates are that perhaps 65 percent of the handicapped children needing preschool programs are not being properly served at the present time.

Congress certainly has given at least modest recognition to this problem with the passage of Public Law 90-538, the Handicapped Childrens' Early Education Assistance Act, and the inclusion in Public Law 94-142 of the preschool incentive program.

As you know, we have a problem at the age range between 3 and 5, which is covered under 94-142; but only if it is not inconsistent with the State's own policy in that respect.

The entitlement of $300 per head has not been realized; it is roughly a third of that at the present time.

But I am hearing from people around the field who are concerned in this area that without the mandate that you have with the older age range, and without the full entitlement, that early childhood programs actually appear to be losing ground under Public Law 94-142.

The amount of time and energy and resources concentrated on trying to meet the commitment to the mandatory age ranges are in fact diverting attention and resources away from early childhood programs.

We would like at least for you to consider some recommendations relative to this; one of them to allow States to count all handicapped children who are receiving appropriate special education services between the ages of zero and 21, rather than just from 3 to 21.

We would also like considered the amendment of the preschool incentives allowance to allow the $300 per child, age zero through 5.

We would also like some considerations, through a phasein procedure perhaps, of amending the statutes to provide free appropriate public education for all eligible handicapped children from zero to 5.

Then, along with this, I think we are going to have to consider the appropriation of moneys for personnel preparation in this area and for some research and development along that line.

A second area has to do with the gifted and talented. CEC has had a commitment to the gifted and talented ever since its inception in 1922, and there has been some recognition of the need in the area of gifted education by the Congress when it created title 9 of the Education Amendments of 1978.

There has, in fact, been an increase in the authorization from fiscal year 1978, where it was at $12.5 million, to an increase of $50 million in fiscal year 1982.

It is our observation that programs for the gifted at the present time are approximately where programs for the handicapped were in the mid- to late-sixties—which means, I think, from our point of view, that they still have a long way to go.

I think the need is great. I think the area of gifted is perhaps the most underprovided service anywhere in the public schools, certainly as far as exceptional children are concerned. Progress is being made; there is no question about that. But we are estimating that only about 40 percent are now being served that probably should be. This really represents a tremendous waste of potential and human resources if we do not in fact get out of the program what we should.

Our recommendations along this line, then, would be to increase the Federal appropriation so it is somewhat commensurate with the $35 million authorization as it stands in 1981.

We would like to consider the extension of the concept of the exceptional children to include the gifted. In at least 28 States, the gifted are housed with the Departments of Special Education, and I would say that is probably true in most of the more progressive States that are dealing with the gifted at the present time.

We feel in CEC that there should be an increase in the rights and protection that are provided to the gifted. Obviously, we have a

number of children who are both gifted and handicapped, and we can provide service through that, particularly in the area of behavior disorders and learning disabilities.

But we do feel that the gifted should have similar rights and protections, that the handicapped have been given under Public Law 94-142. A number of States do this now. We in Georgia, as a matter of fact, use an IEP process for the gifted, and they are included under the funding for exceptional children, just as the handicapped are at the present time.

Now, the third area has to do with handicapped youth and adults. It has been our observation that very little attention has been given to the role of special education in the adult education system.

We are finding, of course, that there is a need for lifelong education that increases throughout the general population; I think because the way of life is shifting, there is more leisure time and a greater need for lifelong education. I think it may be even more critical for at least certain groups of the handicapped.

At the present time, there appears to be no real policy base established for such things as adult education, help for the handicapped, career ed and lifelong learning, continuing education, and for CETA programs and other job training programs.

So we would like to suggest at least a review of this whole area, which CEC would be very happy to assist with if it met your needs.

In conclusion, I think we have to say that we stand in support of Public Law 94-142, as we have in the past and have all along.

We feel that we have made significant strides in at least approaching the quantitative concerns that have been expressed. But we feel that we are now at the point where we are going to place even greater emphasis on the qualitative concerns. And this goes far beyond the procedural safeguards that I know all of us have been concerned about. But we need to begin to relate it to things like increased educational technology, through reintroduction and reformulation of certain curriculum concepts, of improved communication between multidisciplinary areas, and a whole variety of other kinds of issues that are really going to shape and form the substance of the real needs and the real intent of the legislation.

I would like to thank you for the opportunity to testify here today. We are very appreciative of what has gone on, and we appreciate your consideration.

Senator STAFFORD. I thank all three of you very much for your helpful testimony this morning. The subcommittee is very grateful to you.

We will reserve for all Senators on the full committee the right to submit questions in writing to you at an early date for response in writing on your part at your early convenience.

[Mr. Weintraub's responses to questions asked by Senator Randolph follow:]

THE COUNCIL FOR EXCEPTIONAL CHILDREN

March 24, 1980

The Honorable Jennings Randolph
Chairman, Subcommittee on the Handicapped
4230 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Randolph:

On behalf of CEC President Dr. Kenneth Wyatt, I am pleased to submit the following responses to the questions raised in your letter of March 7, 1980. If you would like to elaborate further on these matters, please let us know.

Question: In terms of the BIA administration of Public Law 94-142, do you feel that BIA has sufficient staff assigned to this task?

Response: It is our understanding that the BIA, over the past two years, has employed full time or part time special education coordinators at each Agency and Area Office to direct and coordinate the delivery of special education and related services to students attending BIA operated and/or tribal schools under contract with BIA. While the number of these coordinators may be sufficient, we feel that the newly established Division of Exceptional Children within the BIA Office of Indian Education Programs is presently understaffed. Presently, this Division consists of a director and four professional staff members. While this number of personnel may seem sufficient in relation to other BIA divisions, full services to handicapped children will require an increase in staff. When one considers the geographic diversity of the BIA schools, as well as the many and varied administrative tasks to be carried out, i.e., monitoring, promulgation of special education rules and regulations, development of the Annual Program Plan required under P.L. 94-142, allocation of funds, approval of LEA applications, in-service training, staffing for the BIA Advisory Committee for Exceptional Children, as well as anticipated program initiatives in preschool, vocational, and gifted and talented education, it would seem that additional staff are needed to provide the necessary leadership and direction for these programs. We would also caution that th federal freeze in hiring might preclude the employment of needed administrative, instructional and related services personnel which might impact negatively on the education of American Indian and Alaska Native handicapped children. Further, although there appears to be a sufficient number of special education coordinators at the Area and Agency Office levels, we are concerned that the overwhelming majority are non-Indians. In view of our nation's long-standing Indian preference policies and Section 1135 of P.L. 95-561, which requires the Secretary of Interior to institute a

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policy for the recruitment of qualified Indian educators and a detailed plan to promote employees from within the Bureau, including opportunities for acquiring work experience prior to actual work assignments, we would urge that the Committee examine the progress that the BIA special education program is making with regard to the employment and training of Indian and Alaska Native teachers, administrators, and related services personnel.

Question: In terms of the BIA administration of Public Law 94-142, how does the BIA organizational structure impact on the implementation of Public Law 94-142?

Response: The BIA is presently in the midst of implementing P.L. 95-561, the Education Amendments of 1978, which has and will continue to cause fundamental changes as far as the administration of education programs is concerned. When P.L. 95-561 is fully implemented, the Director of the Office of Indian Education Programs will exercise direct supervisory authority over the operation of Area Office and Agency Office education programs. While the organizational structure of BIA is often offered as a crucial difference in BIA's ability to respond fully to the educational needs of handicapped children, we feel that the perceived and real impact of the organizational structure has become more evident in light of other factors. Unlike the states, BIA did not have special education statutes or regulations in place when P.L. 94-142 was enacted. Moreover, there was no special education line item funding nor were sufficient numbers of permanent qualified special education personnel available. For example, since 1976, five different individuals have had or been delegated responsibility for BIA special education, and in many of these instances, these individuals and their staffs were temporary employees who were detailed from other offices. As a result, when BIA began implementing P.L. 94-142 in the absence of special education rules and regulations, substantial problems were encountered as the nature and thrust of the special education program changed according to a number of outside influences.

Question: Could you provide more details concerning your recommendation that a National special education job bank be established? How do you visualize this being structured and how could it be responsive to National personnel needs?

Response: The essential purpose of creating and operating a national special education job bank is to provide a central capacity for program providers to list their specific employment needs for subsequent matching to qualified applicants seeking employment in special education. Central to the effectiveness of the operation of the Job Bank is its

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capacity to rapidly make known its existence and purpose to prospective employers, such as local, intermediate, and state education agencies, institutions of higher education, private schools, state schools and institutions, and other settings in which special education and related services are provided to handicapped children. Equally important is conveying the same message to prospective applicants, including teachers, teacher educators, administrators and related services personnel.

Among the operational features of a Job Bank are:

- Development of a job position, agency, and community profile by employers for computer storage.
- Development of a position desired and qualifications/interest profile by applicants for computer storage.
- Human and computer matching of employer and applicant profiles.
- Distribution of potential employees to employers following matching to allow employers to communicate directly and personally with applicants with whom they are interested.
- Distribution of potentially appropriate positions to applicants to allow them to follow up on those of interest to them.
- Continuous employer and applicant evaluation of the operation and effectiveness of the Job Bank.

To establish and operate the Job Bank, it is estimated that a five-year annual authorization of $250,000 to $300,000 would be required. In order to ultimately reduce and hopefully eliminate federal costs, a fee structure for listing positions would be established for employers. No fee would be assigned to applicants.

Critical to the ultimate success of the Job Bank is its perception of being responsive and credible to the national breadth of employers and professionals involved in the education of all categories of handicapped children and that it can effectively design and operate various communication systems that will reach employers and applicants. Once established, the Job Bank could expand to include information on college professional training programs, fellowships, etc. The Job Bank could also be helpful in maintaining a bank of persons able to provide technical assistance and special services that a school of education system may require, such as persons who can conduct a pupil evaluation in a particular foreign language. The Job Bank could also be helpful to employers seeking to meet varying affirmative action requirements. We would suggest that if a special authority is created to establish a Job Bank, that it be flexible enough to permit a broadening of its activities.

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Question: Your testimony states that "simply put, school systems should not be required to meet every life need of a child; on the other hand, there are many appropriate and necessary related services which should be provided." You also note that this is a "delicate problem." Does CEC have any specific recommendations with reference to resolution of this matter?

Response: We do not believe, at this time, that a legislative change in those sections pertaining to "related services" is required. We would hope that with appropriate Congressional oversight, the following could be achieved:

(1) The Department of Education promulgate regulatory clarifications emphasizing that educational agencies are only responsible under P.L. 94-142 for providing "related services" when such services are essential for the child to benefit from the special education being provided.
(2) The Department of Education develop a working agreement between BEH and the Office for Civil Rights to assure consistency of interpretation and coordination in enforcement.
(3) The Department of Education undertake an examination to determine the varying federal programs that provide or could provide "related services," the degree to which such services are being provided to meet the needs of children under P.L. 94-142, and what the impediments are to the metering of such cooperative services available. The findings should be made to the Secretary and the Congress so that corrective action can be undertaken. Similar activities should be supported at the state level.

We urge the Subcommittee, the Human Resources Committee, and the Finance Committee to examine the "last dollar requirement" that prevents many federal programs from assisting schools in providing related services. As long as federal programs other than P.L. 94-142 deny the related services children need on the basis that they cannot provide what is "otherwise required," then the fiscal burden will always solely remain on the schools. This was not the intent of the Congress, and that view should be made clear as these programs are considered for reauthorization.

Sincerely yours,

FJ Weintraub

Frederick J. Weintraub
Assistant Executive Director
for Governmental Relations

FJW/ggm

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Senator STAFFORD. I can assure you that the chairman has been listening very carefully to what you have said this morning, and I can say as an aside that with one of my daughters teaching special education in the Vermont school system, I get a frequent input from her—not always flattering to the Senate, either—on the difficulties under the current legislation and so on.

I think with that aside, that the Chair will thank you again for all members of the committee, and announce that the next meeting of this committee will be at the call of the Chair. That having been said, the subcommittee is hereby adjourned.

[Whereupon, at 11:45 a.m., the subcommittee was adjourned.]

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